Oct 18 1876
Submitted
Oct 23 1876

3-46

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~245.~~ 50

THOMAS BEAVER, PLAINTIFF IN ERROR,

vs.

S. STAATS TAYLOR AND MILES A. GILBERT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 11, 1874.

Oct 21 1876
Argument
for Plaintiff

SUPREME COURT OF THE UNITED STATES.

No. 245.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge, and the Hon. Samuel H. Treat, district judge of said district, associate judge, on Saturday the tenth day of July, at the June term of said court, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-fourth year.

J. A. JONES, *Clerk.*

THOMAS BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss :*

Be it remembered that heretofore, to wit, on the twenty-second day of February, in the year of our Lord one thousand eight hundred
2 and fifty-six, there was filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois a transcript from the circuit court of the United States for the northern district of Illinois of proceedings had in the circuit court of the United States for the district of Illinois in the foregoing-entitled cause, and also the declaration, notice, and affidavit filed by the said plaintiff, Thomas Beaver, and the plea filed by the said defendants, S. Staats Taylor and Miles A. Gilbert, in said cause; which said transcript, declaration, notice, affidavit, and plea are in the words and figures following, to wit:

Transcript from northern district.

UNITED STATES OF AMERICA,
Seventh Judicial Circuit, Northern District of Illinois :

Pleas in the circuit court of the United States for said seventh circuit, begun and held within and for the late district of Illinois, at Springfield, on the third Monday of December, A. D. 1854, before the judges of said court.

THOMAS BEAVER, PLAINTIFF,
vs.
SAMUEL STAATS TAYLOR AND MILES A. GILBERT, defendants.

3 Be it remembered that heretofore, to wit, on the 19th day of December, in said December term, A. D. 1854, of said circuit court, in the record of the proceedings thereof in said above-entitled cause appears the following entry, to wit:

THOMAS BEAVER
vs.
SAMUEL STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

This day came the plaintiff, by his attorneys, and filed his declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading an affidavit of due service of a true copy of said declaration and notice upon said defendants, it is ordered on motion of

said plaintiff, by his said attorneys, that defendants plead thereto in twenty days or that their defaults be entered.

And afterwards, to wit, on the 3d day of July, in July term of said circuit court, A. D. 1855, in said northern district of Illinois, at Chicago, in the record of the proceedings of said court in said cause appears the following entry, to wit:

4 THOMAS BEAVER
vs.
SAMUEL STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

By consent of the parties, by their attorneys, it is ordered by the court that this cause be transferred to the southern district of this State.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify that the foregoing transcript contains a full, true, and perfect copy from the records of the proceedings of said court, both in the late district of Illinois and also in said northern district, of all the entries of record in said cause of Thomas Beaver against Samuel Staats Taylor and Miles A. Gilbert, and that all the original papers in said cause, to wit, the declaration, &c., marked "A," and the plea of the defendant, marked "B," are herewith transmitted with this transcript to the southern district of Illinois.

5 In witness whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said northern district, this 20th day of August, A. D. 1855.

WILLIAM H. BRADLEY, *Clerk*.

(Indorsed:) Filed February 22, 1856. Geo. W. Lowry, clerk.

A.

Declaration.

UNITED STATES OF AMERICA,
State and District of Illinois:

Circuit court of the United States, December term, A. D. 1854.

Samuel Staats Taylor and Miles A. Gilbert, who are citizens of the State of Illinois, were summoned to answer unto Thomas Beaver, who is a citizen of the State of Pennsylvania, of a plea of trespass and ejectment:

For that whereas, heretofore, to wit, on the fifteenth day of February, in the year eighteen hundred and fifty-four, at and within the county of Alexander and State of Illinois, the said plaintiff was possessed, as of *their* own demesne in fee-simple, of certain tracts of land, situate at and within the said county, district, and State, and known as the one

6 undivided sixth part of the northwest quarter of section twenty-six and the northeast fractional quarter of section twenty-seven

in township seventeen south and range one west; also, the south fractional half of section twenty-six and the northeast fractional quarter of section thirty-five in township seventeen south, range one west, situated in the county of Alexander and State of Illinois, at or near the junction of the Ohio and Mississippi Rivers, which land exceeds in value five hundred dollars; and the said plaintiff being then and there so possessed of said premises, they, the said defendants, thereafterward, to wit, on the day and year aforesaid, entered into the said described premises, and from the time last aforesaid have unlawfully withheld from the said plaintiff the possession of the said premises, to the damage of the said plaintiff the sum of one hundred dollars, and therefore he brings suit, &c.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

(Indorsed:) Filed Feb'y 22, 1856. Geo. W. Lowry, clerk.

7 *Notice.*

To Messrs. Samuel Staats Taylor and Miles A. Gilbert:

You are hereby notified that the declaration with a copy of which you are now herewith served, and to which copy this notice is subjoined, will be filed in the circuit court of the United States for the district and State of Illinois, on the first day of the next December term thereof, A. D. 1854, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 17th day of July, A. D. 1854.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

(Indorsed:) Filed Feb'y 22, 1856. Geo. W. Lowry, clerk.

8 *Affidavit.*

U. STATES OF AMERICA,
State and Dist. of Ills.:

Circuit court, December term, A. D. 1854.

THOMAS BEAVER
vs.
SAMUEL STAATS TAYLOR ET AL. } In ejectment.

C. B. Lawrence, being duly sworn, deposes and says that he did on the 17th day of July, A. D. 1854, personally serve Samuel Staats Taylor and Miles A. Gilbert, the defendants in this suit, with a true copy of the declaration hereunto annexed, and also a true copy of the notice in writing to the said declaration subjoined and likewise hereunto annexed.

And further this deponent saith not.

CHARLES B. LAWRENCE.

Subscribed and sworn to before me this 14th day of December, A. D. 1854.

[SEAL.]

C. M. WOODS,
Clerk Circuit Court Adams County, Illinois.

(Indorsed:) Filed Feb'y 22, 1856. Geo. W. Lowry, clerk.

9 B.

Plea.

In the circuit court of the United States of America for the district of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

SAMUEL STAATS TAYLOR AND MILES A. GILBERT, defendants,
ats.
THOMAS BEAVER, PLAINTIFF.

And the said Samuel Staats Taylor and Miles A. Gilbert, by David J. and Henry S. Baker, their attorneys, come and defend the force and injury, when, &c., and say that they are not guilty of unlawfully withholding the premises above thereof claimed by the said Thomas Beaver, as alleged above thereof in his declaration, and laid to their charge, or any part thereof, in manner and form as the said Thomas Beaver hath above thereof complained against them; and of this they, the said Samuel Staats Taylor and Miles A. Gilbert, put themselves upon the country. And the said Thomas Beaver doth the like.

DAVID J. & HENRY S. BAKER,
Attorneys for said Taylor and Gilbert, Defendants above named.

10 And afterwards, to wit, on the sixth day of July, in the June term of said circuit court of the United States for the southern district of Illinois, in the year of our Lord one thousand eight hundred and sixty-nine, the following proceedings were had in said court in said cause and entered of record, to wit:

Hearing of cause.

THOMAS BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

Now on this day come again the parties, by their attorneys; whereupon come a jury of good and lawful men, to wit, William Allen, Nicholas Hanson, Herman R. Keel, Thomas Bergen, James H. Singleton, John De Camp, William Loudon, B. W. Ayers, William McCabe, Thomas E. Shutt, Thomas J. Dennis, and John T. Jones, duly elected, tried, and sworn to try the issue joined, and after a partial hearing the further trial of this cause is postponed until to-morrow morning.

11 Then afterwards, to wit, on the eighth day of said July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Hearing of cause.

THOMAS BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

Now on this day come again the parties, and also the jury impanelled herein, and, after hearing the evidence and argument without conclusion, the further trial is postponed until to-morrow morning.

Now afterwards, to wit, on the ninth day of said July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Hearing of cause.

THOMAS BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

12 Now on this day come again the parties, and also the jury impanelled herein, and after hearing the argument of counsel, the retiring of the jury to consider of their verdict is suspended until tomorrow morning, to receive the instructions of the court.

Afterwards, to wit, on the tenth day of said July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Verdict.

THOMAS BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

On this day come again the parties, and also the jury impanelled herein, and, after receiving the instructions of the court, returned the following verdict:

"We, the jury, find the issue for the defendants, and that they are not guilty of unlawfully withholding from the plaintiff the possession of the premises in the declaration described."

13 And afterwards, to wit, on said tenth day of July, being in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Judgment on verdict.

THOMAS A. BEAVER
v.
S. STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

And now comes again the plaintiff, by his attorneys, Messrs. Jackson Grimshaw and Thomas J. Allen, and moves for a new trial herein for the following reasons:

1. The court refused to charge the jury, as asked, on behalf of the plaintiff.
2. The court charged the jury against the law.
3. The court refused proper instructions to the jury.
4. The court gave improper instructions to the jury.
5. The verdict is against the law.
6. The verdict is against the evidence.
7. The verdict of the jury is contrary to the evidence so far as relates to the northeast fractional quarter of section thirty-five in town-

14 ship seventeen (17) south, range one west, in Alexander County, Illinois.

8. The verdict is contrary to the evidence as to the northeast fractional quarter of section twenty-seven in township seventeen (17) south, in range one (1) west, in Alexander County, Illinois.

Which motion the court overruled; and it is therefore considered and adjudged by the court that the defendants go hence without day, and that defendants recover of plaintiff their costs in this behalf expended; and thereupon plaintiff tenders his bill of exceptions, which is signed and sealed by the court and ordered to be filed and made a part of the record in this case.

Then afterwards, to wit, on said tenth day of July of the year last aforesaid, came said plaintiff, by his attorneys, and filed in the clerk's office of said circuit court his bill of exceptions herein; which said bill of exceptions is in the words and figures following, to wit:

15 *Bill of exceptions.*

In the circuit court of the United States in and for the southern district of Illinois.

THOMAS BEAVER
vs.
SAMUEL STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

Be it remembered that this cause coming on to be heard in a new tria granted defendants on their motion at the June term, A. D. 1867, and a jury being impanelled and sworn herein, on this 6th day of July, A. D. 1869, the following proceedings were had, to wit: Defendants waived proof and admitted that the plaintiff, at the time of the institution of this suit, on the 17th day of July, A. D. 1854, and at the time of the alleged entry of the defendants, was the owner in fee of the undivided interest claimed in the premises mentioned and described in plaintiff's declaration, by purchase and conveyance from Joseph B. Holmes, unless said title has been barred or divested by the evidence submitted on behalf of the defendants; that said Holmes derived title through the following chain and order of conveyance:

16 1st. By reason of patent of the lands in question by the United States to Warren Brown on the 28th day of July, A. D. 1817, by deed from said Brown to Shadrach Bond and Pierre Menard, dated August 15th, A. D. 1820; deed from said Bond and Menard to Raphael Widew, dated August 25th, A. D. 1823, by deed from said Widew, dated April 20th, A. D. 1825, to Shadrach Bond and Pierre Menard; by last will and testament of said Bond, probated the 26th day of April, A. D. 1832, by which an undivided one-sixth part of said premises were devised in fee to Isabella F. Bond, a daughter of said Shadrach Bond; and by deed from said Isabella F. Bond, dated April 22nd, A. D. 1852, to said Holmes, who conveyed by deed, dated September 23d, A. D. 1853, to Beaver, the plaintiff, as before stated. It was also admitted on the trial of said cause that defendants were at the time of the commencement of this suit the owners in fee of the undivided five-sixths of the lands described in the declaration, and that they were exercising acts of ownership over the premises in controversy.

17 Defendants, for the purpose of showing color of title, as a defence under the 1st section of the act of March 2nd, 1839, a limitation law of the State of Illinois, and not as title, then offered and read in evidence the following special act of the legislature of said State:

Act to incorporate Cairo City & Canal Company.

An act to incorporate the Cairo City and Canal Company.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That Darius B. Holbrook, Miles A. Gilbert, John S. Hucker, Alexander N. Jenkins, Anthony Olney, and William M. Walker, their associates, successors, and assigns, be, and they are hereby, made a body corporate and politic, under the name of the "Cairo City and Canal Company," and by that name shall be, and are hereby, made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended, in any court or place whatsoever; to make and use a common seal, the same to alter and renew at pleasure, and by that name and style be capable in law of contracting and being contracted with, purchasing, holding, and conveying real and personal estate for the purposes and uses of said corporation as hereinafter limited, and shall be, and are hereby, vested with all the powers, privileges, and immunities which are or may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth. The real estate owned and held by said company shall not exceed the quantity of land embraced in fractional township seventeen, in Alexander County; and the said corporation are hereby authorized to purchase said land, or any part thereof, but more particularly the tract of land incorporated as the city of Cairo, and may proceed to lay off said land, or any part of the land of said township seventeen, into lots for a town, to be known as the city of Cairo; and whenever a plan of said city is made, the company shall deposit a copy of the same, with a full description thereof, in the recorder of deeds' office for the county of Alexander, and any and all additions which the said company may make thereto at any time thereafter shall be also recorded in the same manner; and the said corporation may construct dykes, canals, levees, and embankments for the security and preservation of said city and land and all improvements thereon from all and every inundation which can possibly effect or injure the same, and may erect such works, buildings, and improvements which they may deem necessary for promoting the health and prosperity of said city, and for draining said city, and other purposes. Said corporation may lay off and construct a canal to unite with Cash River at such points on said river as the company may deem most eligible and proper, and may use the water of said river for said canal running to and through the said city of Cairo as said company may direct. The corporation may lay out said canal not exceeding ten rods wide through its whole length, and may take as much more land as may be necessary for the convenient use of said canal and river for *two*-paths, locks, and dams, stone, gravel, and embankments: Provided, That all damages that may be occasioned to any person or corporation by the taking of such lands or materials for the purposes aforesaid shall be paid for by said corporation in manner hereinafter provided.

SECTION 2. The capital stock of said company shall consist of twenty thousand shares, and no greater assessment shall be laid upon any share in said company of a greater amount than one hundred dollars each share, and the immediate government and direction of the affairs of said company shall be vested in a board of not less than five directors, who shall be chosen by the members of the corporation in manner hereinafter provided, and shall hold their office until others shall be duly elected and qualified to take their places as directors. And

the said directors—a majority of whom shall form a quorum for the transaction of business—shall elect one of their members to be president of the board, who shall also be president of the company, and may also elect, in the same manner, a vice-president of the company, and have authority to choose a secretary, who shall be sworn to the faithful discharge of his duty, and a treasurer, who shall give bond to the corporation, with sureties to the satisfaction of the directors, in a sum not less than twenty-thousand dollars, for a faithful discharge of his trust, and appoint such other officers and agents as to them may seem necessary.

SECTION 3. The president and directors for the time being are hereby authorized and empowered, by themselves or their agents, to execute all powers herein granted to the company, and all such other powers
21 and authority for the management of the affairs of the company, not heretofore granted, as may be proper and necessary to carry into effect the objects of this act, and to make such equal assessments from time to time on all shares of said company as they may deem expedient and necessary, and direct the same to be paid to the treasurer of the company, and the treasurer shall give notice of all such assessments for the space of thirty days after due notice by the treasurer of said company. The directors may order the treasurer to sell such share or shares at public auction, after giving due notice thereof, to the highest bidder, and the same shall be transferred to the purchaser, and such delinquent subscribers shall be held accountable to the company for the balance if his share or shares shall sell for less than the assessment due thereon, with interest and cost of sale, and shall be entitled to the overplus if his share or shares shall sell for more than the assessment due, with interest and cost of sale: Provided, however, That no assessment shall be laid upon any share in said company of a greater amount in the whole than one hundred dollars: And provided, also, That nothing shall be construed as to invest said company with banking powers as
22 to authorize them to make, emit, or alter any bank-note or other thing to be used as a circulating medium, as or in lieu of money. But this proviso shall in nowise be so construed as to prevent said corporation from borrowing money upon pledge or security of its property, and using the same in the promotion of their business, in the construction of the works and improvements as authorized under this act.

SECTION 4. The company shall have power to ordain and establish all such by-laws, rules and regulations, and ordinances as they may deem expedient and necessary to accomplish *and* designs and purposes and to carry into effect the provisions of this act, and for the transfer and assignment of its stock and the conveyance of property, and the well ordering, regulating, and securing the interests and affairs of said company: Provided, The same be not repugnant to the constitution and laws of the State or of the United States.

SECTION 5. A toll is hereby granted and established for the benefit of said company upon all passengers and property of all descriptions which may be conveyed or transported upon the canal of the company, upon such terms as may be agreed upon and established from time to
23 time by the directors of said company: Provided, however, That the net income or receipts from tolls shall not amount to more than eight per cent. per annum upon the amount expended upon said canal and the improvement of Cash River: Provided further, That so far as the said Cash River is rendered navigable by any dams said company may construct on said river, the same shall be open, as now, for the free use of all persons: Provided, also, That the said company shall not be

authorized by this act to erect or construct any dam or dams upon or across Cash River for the purposes aforesaid until they shall first have obtained the consent of the county commissioners' court; and whenever the route of said canal shall be located, the company shall have recorded a plan and description thereof in the office of recorder of deeds and the office of said county commissioners' court in Alexander County.

SECTION 6. The said company shall be holden to pay all damages that may arise to any person or corporation by taking their land for said canal, or any other purpose, when it cannot be obtained by voluntary agreement, to be estimated and recovered in the manner provided by law for the recovery of damages happening by laying out highways.

24 SECTION 7. Where the lands or other property or estate of any feme-covert, infant, or person non compos mentis shall be wanted for the purposes and objects of the company, the guardian of said infant, or person non compos mentis, or husband of such feme-covert may release all damages and interest for and in such lands or estate taken for the company, as they might do if same were holden by them in their own right, respectively.

SECTION 8. If any person shall wilfully do or cause to be done any act or acts whatever whereby any building, construction, or work of said corporation, or any engine, machine, or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said corporation treble the amount of damages sustained by means of such offence or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt, and shall be subject to indictment and punishment for high crimes and misdemeanors, as in other cases.

25 SECTION 9. The annual meeting of the members of said company shall be holden on the first Monday of November in each year, at Cairo, or such other places as the directors for the time being may appoint, at which meeting the directors shall be chosen by ballot, each proprietor being entitled to as many votes as he holds shares; and the first-named individual in the first section of this act is hereby authorized to call the first meeting of the said company, by giving notice in some newspaper published in the place where said meeting is to be held, of the time, place, and purpose of said meeting, at least ten days before the time mentioned in said notice.

SECT. 10. This act shall be deemed and taken as a public act, and, as such, shall be taken notice of by all courts of justice in this State without the necessity of pleading the same, and shall be in force from and after its passage.

SECTION 11. This act shall continue in force for the term of twenty-five years from the passage thereof, and during that time, upon any departure from or violation of the provisions of this act, the legislature may repeal, alter, or modify the same, as in their judgment the public good may require.

26 SECTION 12. The privileges herein granted shall cease, the corporation herein created be dissolved, and this act be null and void, unless twenty thousand dollars be expended in the construction of said canal within five years.

Approved 4th March, 1837.

Also the following act:

Act to amend act.

An act to amend an act entitled "An act to incorporate the Cairo City and Canal Company."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the said Cairo City and Canal Company shall not be obliged, as authorized by its charter, to lay off and construct a canal to unite with Cache River. They deem the same to be injurious and detrimental to the health of the city; and the twelfth section of said act, which requires a certain amount to be expended on said canal within five years, is hereby repealed.

Approved February 1, 1839.

It was next proved by defendants that on the 5th day of April, A. D. 1837, Achsah Bond was duly appointed guardian of Isabella F. Bond, by the court of probate of Randolph County, Illinois, and that as such guardian she received letters of appointment in due form, and
27 qualified, and acted as such guardian.

Defendants next offered and read in *in* evidence the following deed from Achsah Bond, the guardian of Isabella F. Bond, to the Cairo City and Canal Company, dated May 22, 1837:

Deed of Bond to Cairo City & Canal Co.

Deed.—Achsah Bond to the Cairo City and Canal Company.

This indenture, made this twenty-second day of May, in the year of our Lord one thousand eight hundred and thirty-seven, between Achsah Bond, of the county of Randolph, in the State of Illinois, widow, executrix, and devisee of Shadrach Bond, of the same county, deceased, and also as guardian (under the act entitled "An act concerning minors, orphans, and guardians," approved February 5, 1827) of Isabella F. Bond, under the age of fourteen years, minor, infant child, and heir at law and devisee of said Shadrach Bond, deceased, party of the first, and the Cairo City and Canal Company, party of the second part. Whereas the said Shadrach Bond, deceased, in his life-time and at the time of his death, was seized in fee of the one undivided half part of all those
28 certain tracts and pieces of land situate, lying, and being in the county of Alexander, in said State, and known and designated in the connected plat of land offered for sale at Kaskaskia, namely: The south fractional half of section twenty-six, (26,) the northeast fractional quarter of section thirty-five, (35,) the northwest quarter of section twenty-six, (26,) the northeast fractional quarter of section twenty-seven, (27,) in township seventeen south, of range one west of the third principal meridian; the said above-described tracts of land containing in the whole four hundred and twenty-nine acres, be the same more or less; and whereas the said Isabella F. Bond, minor, infant child, heir at law, and devisee of said Shadrach Bond, deceased as aforesaid, being seized of the one undivided third part of the one undivided half part of the said above-described tracts and parcels of land, the court of probate in and for said county did on the fifth day of April, in the year of our Lord 1837, choose and appoint Achsah Bond, widow of said deceased aforesaid, guardian for the said Isabella F. Bond, minor, in-

fant child, heir at law, and devisee of said Shadrach Bond, de-
29 ceased as aforesaid, and did take from her, as such guardian under
the act aforesaid, bond with good security, according to the pro-
visions of the act aforesaid, which said bond is filed in the office of said judge of probate; and whereas, among other things, it is provided in the act of the general assembly of the State aforesaid entitled "An act to incorporate the stockholders of the Cairo City and Canal Company," approved March 4, 1837, that when the lands or other property or estate of any feme-covert, infant, or person non compos mentis shall be wanted for the purposes and objects of the company, the guardian of said infant, or non compos mentis, or husband of such feme-covert may release all damages and interest for and in such lands or estates taken for the company, as they might do if the same was holden by them in their own rights respectively; and whereas the tracts of land and premises above described, and every part thereof, have been and are wanted for the purposes and objects of said company, and have been taken with the assent of the said party of the first part for the purposes and ob-
jects aforesaid; and whereas for the consideration of the sum of
30 two thousand dollars, to the said party of the first part in hand
paid or secured to be paid by the said party of the second part, the said party of the first part is willing to release as well all the damages occasioned to said infant child by reasons of taking the said one undivided third part of the one undivided half part of the said described lands as aforesaid, and all the right, title, interest, and demand of the said infant child in and to the said lands, as all the right, title, interest, or claim of the said party of the first part in and to the said described tracts of land to the said party of the second part, and to their successors and assigns, forever:

Now, therefore, this indenture witnesseth, that the said party of the first part, she, the said Achsah Bond, widow, executrix, and devisee of the said Shadrach Bond, as aforesaid, acting in her own right and as guardian of said infant child by v'rtue of the powér and authority given and granted to her by order of said court, and by the last-recited act of the general assembly of the State of Illinois, and for and in consideration of the sum of two thousand dollars, lawful money of the
United States of America, to her in hand paid or secured to be
31 paid by the said party of the second part, the receipt whereof the
said party of the first part doth hereby acknowledge, has granted, bargained, sold, alienéd, remised, released, and quitclaimed, and by these presents doth fully, freely, and absolutely grant, barga'n, sell, alien, release, and quitclaim, into the said party of the second part, and to their successors and assigns forever, the said undivided third part of the said undivided half part of the said lands above described, and the rents, issues, and profits thereof, and all the damages by reason of the taking the same for the purposes and objects aforesaid, and all the right, title, interest, profit, possession, claim, and demand whatsoever of the said party of the first part and of the said infant child of said Shadrach Bond, deceased, of, in, and to the same and every part and parcel thereof: To have and to hold all and singular the said premises, with the appurtenances, unto the said party of the second part, and to their successors and assigns forever, as fully and amply as the said party of the first part may or can convey by virtue of the power and authority
aforesaid, or otherwise howsoever, and as absolutely as she, the
32 said party of the first part, might or could do if the same lands
were wholly held in her own right; and the said party of the first part doth for herself, heirs, executors, and administrators, and all and

every person or persons lawfully claiming or to claim, or that may claim, any estate, right, title, or interest, of, in, and to the said hereinbefore-granted premises, and every part and parcel thereof, covenant to and with the said party of the second part, their seccessors and assigns, that she and they will from time to time and at all times hereafter, upon the reasonable request and at the proper costs and charges of the said party of the second part, their successors and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such other and further and more perfect, absolute, and satisfactory vesting, conveying, and confirming the said hereby released lands and premises above described, and every part and parcel thereof, with the appurtenance', unto the said party of the second part, their successors and assigns forever, in fee-simple, as by the said party of the second shall be reasonably advised and required.

33 In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written, at Kaskaskia, Illinois.

ACHSAH BOND. [L. S.]

Signed, sealed, and delivered in presence of—
JAMES HUGHES,
D. B. HOLBROOK.

STATE OF ILLINOIS,
Randolph County, ss:

I, James Hughes, notary public of said county, do hereby certify that Achsah Bond, whose signature appears to the foregoing instrument of writing, and who is personally known to me to be the person described in and who has executed the same, did appear before me, and did acknowledge the same to be her free and voluntary act and deed for the use and purposes therein mentioned. Given under my hand and seal of office this 22d day of May, 1837.

[L. S.] JAMES HUGHES,
Notary Public.

STATE OF ILLINOIS,
Alexander County, ss:

I, John Q. Harman, clerk of the circuit court of said county, and
34 ex-officio recorder, do hereby certify that the above and foregoing is a true and correct copy of the record of the original instrument of writing recorded in my office, as truly taken and copied by me from the records now remaining in my office. In testimony whereof I have hereunto set my hand and affixed my seal of office at Cairo, in said county, this 28th day of August, A. D. 1861.

[L. S.] JOHN Q. HARMAN,
Clerk and Ex-officio Recorder.

Defendants, for the same purposes, (showing color of title,) next offered and read in evidence a deed in due form, purporting to convey the premises in controversy, with the lands, (in all 3,982 acres, more or less, in Alexander County, Illinois,) executed by said Cairo City and Canal Company to Thomas S. Taylor and Charles Davis, in trust for said Cairo City and Canal Company, dated 13th of June, 1846.

It was here admitted that Taylor and Davis were the trustees of the Cairo City property, and that the defendants were their agents.

Defendants, for the purpose of showing that said Taylor and Davis had paid the taxes on said premises for seven successive years
35 prior to the commencement of this suit, next offered in evidence the following tax receipts for the years 1846, '47, '48, '49, '50, '51, '52, '53, to wit:

Recd. of Miles A. Gilbert four hundred eighty-seven $\frac{88}{100}$ dolls., it being in full for State and county taxes for the year 1847, the following-described property, viz:

Tax-receipt, 1847.

	A.	State.	County.
Frl. sect. 27, T. 16 S., R. 1 W	320	$3 36	$3 84
Frl. " 29, " " " " " "	320	3 36	3 84
" 32, " " " " " "	640	6 72	7 68
" 33, " " " " " "	640	6 72	7 68
" 34, " " " " " "	640	6 72	7 68
" 35, " " " " " "	630	6 72	7 68
W. frl. ¼ sect. 2, T. 17 S., R. 1 W	320	3 36	3 84
E. ½ & N. W. ¼ sect. 3, T. 17 S., R. 1 W	480	5 04	5 76
E. ½ S. E. sect. 4, T. 17 S., R. 1 W	80	84	96
S. E. frl. sect. 5, T. 17 S., R. 1 W	8.59	08	09
S. E. frl. sect. 9, T. 17 S., R. 1 W	40.63	43	49
N. E. ¼ & N. W. sect. 9, T. 17 S., R. 1 W	128.3	1 34	1 54
W. ½ & N. E. sect. 10, T. 17 S., R. 1 W	480	5 04	5 76
W. ½ & S. frl. ¼ sect. 11, T. 17 S., R. 1 W	532.25	5 59	6 39
Frl sect. 14, T. 17 S., R. 1 W	492.44	5 18	5 92
Frl. sect. 15, T. 17 S., R. 1 W	273.98	2 88	3 29
56 frl. " 22, " " " " " "	190.64	4 00	4 58
Frl. 23, " " " " " "	611.95	12 86	14 68
36 Frl. sect. 24, T. 17 S., R. 1 W	45.31	1 90	2 18
Part sect. 25, " " " " " "	402.23	105 72	120 85
Frl. " 26, " " " " " "	534.42	35 54	40 62
" " 27, " " " " " "	50.82	1 42	1 62
" " 35, " " " " " "	3.95	11	13
" " 36, " " " " " "	96.97	2 72	3 10
$227 68			
260 20		227 68	260 20
		2 80	
487 88			
2 80 printer's fee.		230 48	230 48
490 68			490 68

Recd. the above sum, $487.88, and two dollars and eighty cents, printer's fee, making in all the sum of four hundred and ninety dollars and $\frac{68}{100}$.

A. W. ANDERSON, *Collector.*

(Endorsed:) Taxes for 1847. Alexander Co. State and county taxes on Cairo City property.

Recd. of M. A. Gilbert, agent of Thomas S. Taylor and Charles Davis, trustees of the Cairo City property, the sum of one hundred and thirty dollars and ten cents, it being in full for the road tax of Alexan-
37 der County, as assessed upon said property for the year 1847.

A. W. ANDERSON, *Collector.*

(Endorsed:) Road tax, 1847, Alexander County, on Cairo City property.

Tax-receipt, 1848.

Recd. of M. A. Gilbert, agent for the trustees of the Cairo City property, six hundred forty-six $\frac{40}{100}$ dollars, it being in full for the State, county, and road tax for the year 1848, on the following-described property in Alexander County, Illinois, viz:

	A.	State.	County.	Road.
¼ section 27, T. 16 S., R. 1 west	320	$3 77	$3 84	$1 92
¼ " 28, " " " " " "	320	3 77	3 84	1 92
" 32, " " " " " "	640	7 49	7 69	3 84
" 33, " " " " " "	640	7 49	7 69	3 84
" 34, " " " " " "	640	7 49	7 69	3 84
" 35, " " " " " "	640	7 49	7 69	3 84
W. frl. ½ section 2, T. 17 S., R. 1 west	320	3 77	3 84	1 92
E. ½ frl. N. W. ¼, sect. 3, T. 17 S., R. 1 west	480	5 61	5 76	2 88
E. ½ of S. E. ¼ section 4, T. 17 S., R. 1 west	80	93	96	48
S. E. frl. section 5, T. 17 S., R. 1 west	85.9	10	11	5
S. E. ¼ section 9, T. 17 S., R. 1 west	48.36	47	49	24
N. E. & N. W. frl. section 9, T. 17 S., R. 1 west	128.3	1 49	1 53	76
W. ½ & N. E. ¼ section 10, T. 17 S., R. 1 west	480	5 61	5 76	2 88
38 W. ½ & E. frl. ½ section 11, T. 17 S., R. 1 west	532.25	6 23	6 38	3 19
Frl. section 14, T. 17 S., R. 1 west	492.44	5 76	5 91	2 95
" " 15, " " " " " "	237.98	3 20	3 29	1 64
" " 22, " " " " " "	190.64	4 46	4 57	2 28
" " 23, " " " " " "	611.95	14 32	14 68	7 34
" " 24, " " " " " "	45.31	2 14	2 18	1 09
" " 25, " " " " " "	402.83	117 82	120 85	60 42
" 26, " " " " " "	534.42	39 60	40 62	20 31
" 27, " " " " " "	52.82	1 58	1 62	81
" " 35, " " " " " "	3.15	12	13	6
" " 36, " " " " " "	96.97	3 02	3 10	1 55
Printer's fees on 24 tracts, at 10c			2 40	
		253 73	262 62	130 05
				262 62
				253 73
				646 40

April 15th, 1849.

G. MASSEY,
Col. A. C., Ills.

(Endorsed:) Bills of taxes, Cairo City property, for 1848, $698.94, charged expenses July 2, 1849.

Tax-receipt, 1849.

STATE OF ILLINOIS,
Alexander County:

Received of M. A. Gilbert, agent for Thomas S. Taylor and Charles Davis, trustees of the "Cairo City property," five hundred and
39 fifteen dollars and thirty-one cents, in full of taxes assessed on the following lands, for State, county, and road purposes, for the year A. D. 1849, as follows, to wit:

	Acres.	State tax.	County tax.	Road tax.
South ½ sect 27, T. 16, R. 1 W	320	$4 64	$3 20	$1 60
" 28 " " " "	320	4 60	3 20	1 60
" 32 " " " "	640	18 56	12 80	6 40
" 33 " " " "	640	18 56	12 80	6 40
" 34 " " " "	640	18 56	12 80	6 40
West ½ " 35 " " " "	320	9 38	6 40	3 20
W. frl. ¼ " 2 T. 17, " " "	320	3 71	2 56	1 28
E. ½ and frl. N. W. ¼ sect. 3, T. 17, R. 1 W	480	5 57	3 84	1 92
E. ½ of S. E. ¼ sect. 4, T. 17, R. 1 W	80	93	64	32
S. E. frl. sect. 5, T. 17, R. 1 W	8.59	10	07	03
S. frl. ¼ sect. 9, T. 17, R. 1 W	48.36	56	83	19
N. E. and N. W. frl. sect. 9, T. 17, R. 1 W	128.3	1 48	1 02	51
W. ½ and N, E. ¼ sect. 10, T. 17, R. 1 W	480	5 57	3 84	1 92
W. ½ and E. frl. ½ sect. 11, T. 17, R. 1 W	532.25	6 40	4 42	2 21
Fractional sect. 14, T. 17, R. 1 W	492.44	7 14	4 93	2 47
Do. " 15 " " " "	237.98	3 45	2 38	1 19
Do. " 22 " " " "	190.64	3 31	2 28	1 14
Do. " 23 " " " "	611.95	10 65	7 35	3 68
Do. " 24 " " " "	45.31	1 31	90	45
Do. " 25 " " " "	402.98	93 48	64 49	32 25
Do. " 26 " " " "	534.42	31 00	21 38	10 69
Do. " 27 " " " "	528.2	91	63	32
40 Do. sect. 32, T. 17, R. 1 W	3.15	09	06	03
Do. " 36 " " " "	96.97	1 68	1 16	58
		251 64	173 53	86 78
Costs on 28 tracts @ 12c.			3 36	176 89
			176 89	251 64
				515 31

April 29, 1850.

GREEN MASSEY,
Sheriff and Collector of Alexander County.
By W. C. MASSEY, *Dep.*

(Endorsed:) Bill for taxes for 1849. Cairo City property.

Tax-receipt, 1850.

STATE OF ILLINOIS,
Alexander County:

COLLECTOR'S OFFICE,
Thebes, May 19th, 1851.

Recd. of George Stoddard, for Messrs. Taylor and Davis, trustees of the Cairo City property, four hundred thirty-nine $\frac{84}{100}$ dollars, in full of all taxes and costs assessed for State and county purposes for the year 1850 on the following-described lands, situated in said county, viz:

41 No. of acres.	Description.	Sec.	T.	R.	Valua'n.	S. T.	Co. T.	R. T.	Costs.
320	S. ½	27	16	1 W.	$640 00	$3 71½	$2 56	$1 28	0 10
320	S. ½	28	"	1 W.	640 00	3 71½	2 56	1 28	0 10
640	Sect	32	"	1 W.	1, 280 00	7 43	5 12	2 56	0 10
640	"	33	"	1 W.	1, 280 00	7 43	5 12	2 56	0 10
640	"	34	"	1 W.	1, 280 00	7 43	5 12	2 56	0 10
320	W. ½	35	"	1 W.	640 00	3 71½	2 56	1 28	0 10
320	W. frl ½	2	17	1 W.	960 00	5 57	3 84	1 92	0 10
480	N. ½ S. E. ½	3	"	1 W.	1, 340 00	7 77	5 36	2 68	0 10
80	E. ½ S. E.	4	"	1 W.	240 00	1 39	0 96	48	0 10
8. 59	S. E. frl	5	"	1 W.	25 75	15	10½	05½	0 10
176. 36	Frl	9	"	1 W.	353 00	2 04	1 41	70½	0 10
480. 00	W. ½ N. E. ½	10	"	"	960 00	5 57	3 84	1 92	0 10
532. 25	Frl	11	"	"	1, 065 00	6 17½	4 26	2 13	0 10
492. 44	Frl	14	"	"	1, 231 00	7 13½	4 92½	2 46½	0 10
237. 98	"	15	"	"	596 00	3 45½	2 39	1 19½	0 10
190. 64	"	22	"	"	572 00	3 31½	2 28½	1 14½	0 10
611. 95	"	23	"	"	1, 833 00	10 63	7 33	3 66½	0 10
45. 31	"	24	"	"	226 00	1 31	0 90½	0 45½	0 10
402. 48	"	25	"	"	16, 118 00	93 48	64 47	32 23½	0 10
534. 42	"	26	"	"	5, 344 00	30 99½	21 37½	10 68½	0 10
52. 87	"	27	"	"	158 00	91½	63	31½	0 10
3. 15	"	35	"	"	10 00	05	03	01	0 10
96. 97	"	36	"	"	290 00	1 68½	1 16	58	0 10

COVENTRY CULLEY, *Collector.*

(Endorsed :) Alexander Co., Ills. Tax-receipt for 1850. $439.84.

42 *Tax-receipt*, 1851.

STATE OF ILLINOIS, *County of Alexander :*

COLLECTOR'S OFFICE, 24*th March*, 1852.

Received of S. S. Taylor, for Taylor & Davis, five hundred and seventy-six $\frac{2}{100}$ dollars, in full for all taxes assessed for the year 1851 on the following-described lands, situated in said county, viz :

Subdivision of section.	Section.	Town.	Range.	Acres.	Valuation.	Taxes.
S. ½ S. E.	27	16	1 W.	80	$250	$2 40
S. ½ S. W.	"	"	"	80	250	2 40
S. ½ S. W.	28	"	"	80	250	2 40
S. ½ S. E.	"	"	"	80	250	2 40
	32	"	"	628. 43	300	22 67
	33	"	"	640	300	23 10
	34	"	"	640. 97	300	23 13
W. ½ N. W.	35	"	"	80. 26	300	2 89
S. W.	35	"	"	160. 32	300	5 76
N. W.	2	17	1 W.	160	300	5 76
N. ½ and S. E.	3	"	"	480	300	17 33
E. ½ S. E.	4	"	"	80	300	2 89
S. E.	5	"	"	2. 39	300	35
Fr.	9	"	"	176. 59	300	6 36
Fr.	10	"	"	480	300	17 33
Fr.	11	"	"	532. 25	300	19 21
Fr.	14	17	"	492. 44	300	16 30
Fr.	15	"	"	278. 98	300	10 06
43 Fr.	22	"	"	190. 64	300	6 88
Fr.	23	"	"	611. 45	400	29 43
Fr.	24	"	"	45. 31	10 00	5 49
Fr.	25	"	"	402	5, 000	241 86
Fr.	26	"	"	534. 42	1, 500	96 42
Fr.	27	"	"	52. 37	400	2 51
Fr.	35	"	"	3. 94	400	18
Fr.	36	"	"	66. 47	400	4 51
						570 02
Personal property					500	6 00
Total taxes						576 02

C. CULLEY,
Sheriff and Collector A. C., 1851.

(Endorsed :) Alexander Co., Ills. 1851. $576.02.

Tax-receipt, 1852.

STATE OF ILLINOIS,
County of Alexander:

COLLECTOR'S OFFICE,
Thebes, May 23, 1853.

Received of S. S. Taylor, for Taylor and Davis, eight hundred and two $\frac{17}{100}$ dollars, in full for all taxes assessed for the year 1852 on the following-described lands, situated in said county, viz:

44 Subdivision of section.	Sec.	Town.	Range.	Acres.	Valuation.	Taxes & costs.
S. W. ¼	2	17	1 W.	160	$3	$5 91
N. W. ¼	2	17	1 W.	160	3	5 91
E. ½ and frl. N. W. ¼	3	17	1 W.	480	3	17 47
S. E. ¼	3	17	1 W.	160	3	5 91
E. ½ S. E. ¼	4	17	1 W.	80	3	3 03
Frl. S. E. ¼	5	17	1 W.	8.59	3	44
Frl. sec	9	17	1 W.	176.39	3	6 51
W. ½ and N. E. ¼	10	17	1 W.	480	3	17 47
Frl. sec	11	17	1 W.	532.25	3	19 36
Frl. sec	14	17	1 W.	492.44	3	17 37
Frl. sec	15	17	1 W.	137.88	3	8 46
Frl. sec	22	17	1 W.	190.64	3	6 89
Frl. sec	23	17	1 W.	611.55	5	36 95
Frl. sec	24	17	1 W.	45.31	5	2 85
"	25	17	1 W.	402	100	483 88
"	26	17	1 W.	534.43	10	64 69
"	27	17	1 W.	52.81	3	2 04
"	35	17	1 W.	3.15	3	26
"	36	17	1 W.	96.87	3	4 23
S. ½ S. W. qr	27	16	1 W.	80	2½	2 55
S. ½ S. E. qr	27	16	1 W.	80	2½	2 55
S. ½ S. E. qr	28	16	1 W.	80	2½	2 55
S. ½ S. W. qr	28	16	1 W.	80	2½	2 55
All of	32	16	1 W.	638	3	23 18
All of	33	16	1 W.	640	3	23 18
All of	34	16	1 W.	640	3	23 18
W. ½ N. W. qr	35	16	1 W.	80.26	3	3 03
S. W. ¼	35	16	1 W.	160.52	3	5 90
						802 17

45 W. C. MUSSEY,
Sheriff and Ex-officio Collector Alexander County, Illinois.

(Endorsed:) Alexander Co., Ills. 1852. $802\frac{17}{100}$.

Tax-receipt, 1853.

COLLECTOR'S OFFICE,
Thebes, Alexander County, Ills., 2, 1854.

Received from S. Slaats Taylor, for Taylor and Davis, trustees of Cairo City property, seven hundred and seventy-eight dollars, in full of State, county, and road taxes assessed upon the following-described lands in Alexander County, Illinois, for the year A. D. 1853, to wit:

									Acres.	State & county.	Road.
S. ½ S. W.,	S. 25,	T. 16,	1 W						80	2 14	48
S. ½ S. E.,	S. 27,	T. 16,	1 W						80	2 14	48
S. ½ S. W.,	S. 28,	T. 16,	1 W						80	2 14	48
S. ½ S. E.,	S. 28,	T. 16	"	"					80	2 14	48
E. ½ N. W.	S. 29,	"	"	"					80	2 14	48
	Sec. 32,	"	"	"					638	19 94	4 47
	" 33,	"	"	"					640. 37	20 01	4 48
	" 34,	"	"	"					640	20 10	4 48
W. ½ N. W.	" 35,	"	"	"					80	2 50	56
S. W.	" 35,	"	"		"				160	4 99	1 12
S. W.	" 2,	T.	17						160	5 01	1 12
46 N. W.	" 2,	"	"	1	"				160	5 00	1 12
E. ½ frl. N. W.	" 3,	"	"	"	"				480	15 00	3 36
E. ½ S. E.	" 4,	"	"	"	"				80	2 56	56
Frl. S. E.	" 5,	"	"	"	"				8. 59	25	05
Frl.	" 9,	"	"	"	"				176. 39	5 43	1 22
W. ½ & N. E.	" 10,	"	"	"	"				488	15 00	3 36
Frl.	" 11,	"	"	"	"				532. 25	16 84	3 92
Frl.	" 14,	"	"	"	"				492. 44	15 37	3 44
Frl.	" 15,	T.	17,	1	W.				237. 98	8 27	1 85
"	" 22,	"		"	"				190. 64	9 33	2 09
"	" 23,	"		"	"				611. 55	30 01	6 92
"	" 24,	"		"	"				45. 31	2 30	49
"	" 25,	"		"	"				402	369 90	82 81
"	" 26,	"		"	"				334. 42	59 24	12 81
"	" 27,	"		"	"				52. 87	1 67	37
"	" 35,	"		"	"				3. 15	09	03
"	" 36,	"		"	"				96. 97	3 32	67
										632 47	145 72

WM. C. MUSSEY,
Sheriff and Ex-off. Col. Alex. Co., Ills.

(Endorsed:) Alexander Co., Ills. 1853. Taxes, $778.00.

47 Defendants, for the purpose of making out their defence under the laws of the State of Illinois, introduced the following witnesses:

Testimony of Miles A. Gilbert.

1st. MILES A. GILBERT, who, being sworn and questioned, testified:

Q. Were you at any time the agent of the trustees of the Cairo City property?

A. I was.

Q. Look at these tax-receipts and state whether you paid the taxes mentioned on the land there described for those years, and whether you paid all the taxes assessed on those lands for those years. (Receipts shown witness.)

A. I paid the taxes on the lands here described at the times mentioned here for the trustees of the Cairo City property as their agent. S. S. Taylor and Charles Davis were the trustees. I paid the taxes as their agent, and for them.

Q. Those are the receipts given you?

A. Yes, sir; those are the receipts I took at the time of the payment.

Q. Those receipts are signed by the officers authorized to collect taxes?

48 A. Yes, sir; by the officers then authorized to collect the taxes. I paid all the taxes that were assessed for those years, as agent for the trustees. The first payment was for the taxes of 1846, paid on the 29th of Sept., 1847.

Q. State if you paid the taxes on after that each succeeding year for the year previous.

A. Yes, sir. In 1847 I paid the taxes for 1846, and in 1848 for the year 1847, and so on for each year upon all the property owned by the company there.

(Tax receipts of 1846, '7, '8, '9, put in evidence by the defendants subject to objections.)

Cross-examination by Mr. Grimshaw:

Q. How do you fix the time when you paid these taxes of 1846?

A. It is dated on the receipt. (Witness points out place of date.)

Q. I don't see it that way. Read that memoranda.

(Witness reads as follows: "Interest at 10 per cent. from March 27th, to Sept. 29th, 1847.")

49 Q. You assume from that that you paid the taxes Sept. 29th, 1847?

A. Yes, sir.

Q. How do you get at the date?

A. That is my own handwriting. The interest was charged up to the time I paid it as required by the sheriff.

Q. Was the taxes of 1846 paid at that time, Sept. 29th, 1847?

A. Yes, sir.

Q. For whom did you pay that?

A. For the trustees of the Cairo City property, S. S. Taylor and Charles Davis.

Q. How did you get your money with you paid the taxes, and from whom?

A. The trustees remitted it to me, Charles Davis and S. S. Taylor.

Q. What did they send you the money?

A. They usually sent it in the spring, but this season I think they sent it a little later. I don't exactly recollect. I usually got it in April or May.

Q. When did you get that particular payment?

A. I don't remember the precise date on which I received that particular payment.

Q. You say you paid them as agent; when did your agency commence?

50 A. On the 29th of Sept., 1846, for the Cairo City property.

Q. When did it cease?

A. It ceased in 1851, in April, I think, at the time Mr. Taylor came.

Q. You were agent of the trustees of the Cairo City property from Sept. 29th, 1846, to April, 1851, when Mr. Taylor came?

A. Yes, sir.

Q. In whose name were those taxes assessed?

A. I don't know. I gave them in frequently to be assessed in the name of the trustees, first, in the name of the Cairo City and Canal Company, then in the name of the trustees; but the officers assessing did not frequently assess them in those names. They assessed in various names; sometimes in the names of the original purchasers.

Q. These receipts seem to be in the name of yourself?

A. I don't pretend to know the fact in whose names they were assessed, but I paid the taxes with the money of the trustees as agent for them. I had no interest in them.

Q. Did you ever buy these lands in for taxes?

A. Yes, sir.

Q. Did you ever take a deed for them?

A. Really, I don't recollect.

51 Q. Look at that copy of a deed. (Shows copy.) Didn't you take that deed, or the deed of which that is a copy?

A. I think I did. I have forgotten, it has been so long ago.

Q. You purchased these lands for taxes, and took a deed of which that is a copy?

A. This seems to be a copy of it; it was about that time.

Q. That is a copy of the deed you took?

A. This was for the taxes of 1843 and 1845; yes, sir, that is correct. I bought the land in for these years, and that is a true copy of the deed.

Redirect examination by Mr. Edwards:

Q. Had you been agent of Cairo City and Canal Company before the time of this purchase?

A. Yes, sir; I was. I became agent of the Cairo City and Canal Company in April, 1843, and paid the taxes from that time on—all the taxes assessed on these lands.

Q. At the time you bought these lands in what capacity were
52 you acting? And state whether you paid for that land, when you got the deed, with the money of your principals.

A. I was buying in the capacity of agent of the Cairo City and Canal Company, and in that capacity I received the money from them to pay these purchases. I paid it with their money.

Q. State whether it in reality for their benefit.

(Objected to.)

A. Yes, sir. I will tell you the reason why I purchased in my own name. There was a report in circulation that there were some old tax-titles, and I thought best to purchase in my own name in order to cut off these tax-titles. I was acting with the knowledge and with the authority of the Cairo City and Canal Company.

Q. Did these old tax-titles accrue while the title was in the Cairo City and Canal Company, or after they were transfer'ed or conveyed to Taylor & Davis?

A. While in the Cairo City and Canal Co.

Q. The taxes for which the sale was made accrued before the deed was made to Taylor & Davis?

A. Yes, sir.

53 Recross-examination by Mr. Grimshaw:

Q. You say you bought these lands for your principals; why did you not take the deed in the name of your principals?

A. Because it was thought in order to cut off these old tax-titles it would not do to buy them in the names of the original proprietors.

Q. Suppose you had died before you made any conveyance to those parties?

A. I suppose they would have buried me.

Q. Where would the titles have gone to?

A. That would have been their own risk.

Q. Have you ever conveyed those lands to anybody?

A. Yes, sir; I think to the trustees of the Cairo City property. It has been so many years, that I cannot say positively whether I conveyed them to the Cairo City and Canal Company, or the trustees of the Cairo City property. I think I conveyed them to the trustees, Taylor & Davis.

Q. Does that memoranda say that was the day on which you paid the taxes?

54 (Refer'ing to memoranda of 29th Sept. on tax-reciept.)

A. No, sir; but recalls the things to my mind. It is a memoranda of a calculation of interest.

Q. You can't remember to whom you conveyed this property?

A. No, sir; not, certainly. It was so insignifica'te a thing at that time that I don't recollect what parties it was to. I think it was the trustees.

Q. You bought the lands in in your own name because you thought it would not do to buy them in the name of your principals?

A. It was to cut off these tax-titles. I didn't think these titles amounted to anything; I didn't think they were in force; but it was thought best, to make it sure, that I should purchase in my own name.

Q. Where did you get that notion that you should buy in your own name?

A. It might have originated in my own brain, or I might have got it from reading the books.

Q. Suppose they had filed a bill in chancery; they have made
55 you discover that you bought the lands with these men's money.

A. Yes, sir.

Q. Then you would not have made it?

A. No, sir; I suppose not.

Testimony of S. S. Taylor.

Defendants next introduced, 2nd, S. S. TAYLOR, who was sworn, and testified as follows:

Q. Take these tax-receipts, (receipts handed witness,) and state to the court in what capacity you acted, and whether these taxes were paid, and by whom, and whether they were all the taxes assessed on the lands described in the receipts.

A. I was acting for the Cairo City property as their agent in May 1851. I sent George Stoddard to pay the taxes on these lands, and he brought back these receipts. That is Mr. Culley's handwriting, I think. I know it. May 19th, 1851, the taxes for 1850 were paid, taxes and costs—State and county taxes. On the 24th of March, 1852, I paid all the taxes assessed for 1851 on the same lands. I paid them myself to the sheriff. That is the receipt for them, (referring to receipt.)

On the 23rd of May, 1853, I paid all the taxes assessed for 1852.
56 I paid them at Thebes myself. On the 2nd of June, 1854, I paid all the taxes for 1853 on the same land, at Thebes, to the sheriff.

Q. Was that all the taxes assessed on those lands for those years?

A. Yes, sir; the receipts so stated.

(Receipts showing payment of taxes of 1850, '51, '52, & '53 put in evidence; also deposition of Wm. R. Hobart read in evidence by defendants' counsel.)

Testimony of Miles A. Gilbert, (recalled.)

MILES A. GILBERT was recalled by defendants, who testified a' follows:

Q. State when you first went to Cairo, and what you know with relation to who was in possession of the point of land then embracing these lands in dispute, and who exercised acts of ownership, and what the acts of ownership, if any, were and when they commenced. Begin at the beginning, and make your statement.

A. I commenced acting as the agent of the Cairo City and Canal Company in April, 1843. I went down there and found this Ohio levee nearly compleated. I went ahead and took possession of all of the

property, (pointing out boundary on the map.) I went on and
57 completed this cross-levee from the Ohio to the Mississippi, (describing levee as laid down on map.) I completed the levee before the fall of 1844; then, during the term of my agency of the Cairo City and Canal Company, I repaired this Ohio levee and finished it so as to keep the water out. In 1844, I took general charge of all the property there, paid taxes, leased buildings, and collected rents and kept off trespassers. I permitted people to chop wood on it, and allowed people cutting wood to build shanties for the occupancy of their wood-choppers. My whole object was to clear up this land and occupy it, not only the land in dispute, but all the land *in* the point.

Q. Were you acting as the agent of the Cairo City & Canal Co.?

A. Yes, sir.

Q. State whether their claim to title was known.

A. It was notoriously known. It was equally notorious that I was agent of the company. It was known to every man and woman in Cairo that I was acting as agent of the company up to 1846, and from that time I acted for both companys up to 1851, when Mr.
58 Taylor came there. Through all this time no one pretended to dispute the title of both companies. I stuck up notices notifying people not to trespass upon these grounds, or cut off wood without authority.

Q. To what extent was this notice given?

A. I stuck notices all through the town, in all public places; every one must have known it.

Q. What was the condition of Cairo at the time you went there?

A. There was, I should judge, some 400 or 500 inhabitants. They had built little shanties around there, and whenever I ordered them to remove them, or ask the acknowledgement of our occupation, they never refused to do it.

Q. State whether there was any town there; and, if so, what authority you exercised over it down there at the point.

A. I stated that fact. There were a great many buildings there, put up by the Cairo City and Canal Company, or by the permission. I exercised authority over them by collecting rents, and renting them generally.

Q. State if there were any maps or pamphlets in circulation
59 by the company; if so, produce one of those maps.

A. I wish to state that in making this cross-levee there was from 6 to 10 acres owned by the State. We found it convenient to run across the corner of that, and there may be a few buildings on that depot-ground. I didn't pretend to exercise any authority over that ground or the buildings on it. When I first went down there all the property was claimed by the company except this depot-ground. Afterwards the Cairo City & Canal Company sold by meet's and bounds a little piece of ground, but not as a Cairo lot. There was not a Cairo lot sold there during my administration; and, with these two exceptions, I exercised control over the entire property as the agent of the companies.

Q. State whether any part of this property was divided up into lots and blocks while you were there.

A. No part of this property was divided up into lots and blocks while I was there. No regular plat made and recorded. There was a
60 plat made to show the intention of the company, but it never was recorded.

Q. State whether there ever was a survey dividing it into lots and blocks to your knowledge.

A. No, sir; if there had been one I think I would have known it.

Q. This map that is before you, (map showing lots and blocks in Cairo,) state whether this map was made under the direction of the company.

A. This map was made by Mr. Strickland, the engineer of the company.

Q. By whom was that plat made, and what is shown upon the face of it?

A. That map was made by Mr. Strickland, the engineer of the Cairo City and Canal Company, under the directions of the company.

Q. State what is shown by these lines.

A. It shows the indication of these lands. (The witness here points out the lands indicated on the map.) These lines represent the extent of the city of Cairo.

Q. When was that made?

A. This survey was made in 1857, by James Thompson.

61 Q. When was the plat made?

A. I think somewhere from 1837 to 1839. It was before I went there.

Q. Point out to the jury, on the map, where these levees are, where they cross, &c.

(Witness indicates upon the map as directed.)

Q. State whether these maps were circulated or posted up.

A. Yes, sir; they were generally circulated ove' the East and sent to all who felt an interest in them; then afterwards they were circulated among individuals all over the West; that was done within my own knowledge.

(Pamphlet with map attached shown to witness.)

Q. Look at that pamphlet with map attached and state what you know, of your own knowledge, of the circulation of that as director of the Cairo City and Canal Company.

A. I was director of the company, and I know that this plat was made and generally circulated over the West and East. It was a notorious fact that it was made.

62 (Witness here explains the lines indicated on the map.) The levies included a little over seven miles altogether, starting from the point.

Q. Describe the character of those levies—how much they cost when you lived there.

A. I don't know how much they cost. A great many thousand dollars.

Q. I mean up to the time you were agent.

A. They cost up to that time from $130,000 to $150,000.

Q. When was this cross-levie built?

A. That was built in 1849, as near as I can recollect.

Q. You stated you cleared away timber; now state more particularly what you did in relation to clearing off the land. If you made contracts with any particular persons, state who they were and what they did under these contracts.

A. I made contracts with several for chopping off the timber. Amoung them I recollect Mr. Joiner and Mr. Sager particularly; they had large contracts. I gave them the privilege of cutting them at a stipu-

63 lated price per cord. They were to cut it off as clear and clean as they could. There were some very heavy sycamore trees which their contract would not justify them in cutting, and which they left.

Q. How early did your first contract begin?

A. I think Mr. Joondes' was in 1843, the first contract.

Q. State how long this clearing continued.

A. It continued from that time, following with others, I believe, up to 1851. I gave him permission to employ whatever choppers he chose, holding him responsible for the wood cut. I allowed him the privelege of putting up shanties for the choppers.

Testimony of S. S. Taylor, (recalled.)

S. S. TAYLOR was recalled by defendants, and testified as follows:

Q. State when you went to Cairo, and what you found there, and what you know with relation to these tracts of land, their possession, occupation, and control.

A. I went to Cairo, as the agent of the Cairo City property, in April, 1851. I succeeded Mr. Gilbert some 15 or 18 months. Before that
64 Capt. Long had been out there and had been engaged in making a survey of these lands. When I went there I found them at work surveying. There was a party of about 15 of them, three four engineers, besides Capt. Long, clearing and preparing the ground for occupation as a city. I found these levies built pretty much as Mr. Gilbert has described them. I found a number of buildings alоung the Ohio River in occupation. I found also some shanties and other buildings around on the ground in dispute. Amoung the first things I did was to aske by whose authority they held them. I found in every case, except on this depot-ground and a piece of ground belonging to Mr. McKinney, they all said they were renting and paying rent to the Cairo City property, and were there by their permission.

Q. Was that McKinney land upon any of this disputed ground?

A. No, sir; it was inside of this levie. I went to see Mr. McKinney at St. Louis. He told me—(objected to; ruled out)—McKinney told me he had received a conveyance to that piece of ground
65 from the Cairo City property. (Objected to.) I found a number of buildings, cottages, that had been built. I found a foundry building which must have been 100 feet square, a brick building. I found a large carpenter-shop 100 feet long and 30 feet or 40 feet wide. I found 40 or 50 buildings occupied by parties, most of them belonging to the Cairo City and Canal Company. I found a few buildings between the McKinney lot and the old hotel at the point; that parties owned the buildings. The old hotel at the point had been in the occupancy of the Cairo City and Canal Company 12 or 14 years. I found parties there cutting timber. I asked by what authority they cut. They said they had authority from Mr. Gilbert. I continued these contracts with those men. There were contracts with Webster, Whitecamp, and others whose names I have forgotten. These parties went on and cut thousands of cords of wood under these contracts. Most of the timber was
66 cut from these disputed lands while I was there. The timber was mostly all cut off from down on the point when I went there.

Q. When you speake of the disputed lands you mean the lands in controversy in this suit?

A. Yes, sir.

Q. State the object you had in clearing up these lands.

A. When I went there I was instructed by the trustees of the Cairo City property to prepare the whole ground for the use and occupation of the city. I have a power of attorney here to complete the whole of it, including these sections. Immediately after I went I took charge

of the engineering party, who had been there before, and under my directions they laid out and made a plat covering the whole of this ground within the levies, and more besides. They threw aside the old plat, making an entirely new plat covering the whole of this disputed land, everything inside the levies. I proceeded to lay out a portion of that ground into lots and blocks, preparing it for occupation.
67 They cut the timber off clean from it, and I offered it for sale in 1853. As early as 1852, while engaged in cutting off this timber, I extended some of the streets over all the disputed ground. I extended out 8th, 10th, 12th, and 14th streets, and cut out and widened the streets on each side to the extent of about 100 feet.

Q. Did these streets extende over the disputed land?

A. The streets had been laid out as part of the general plat. The street that had been laid out on 25 extended out over these disputed lands to the Missi'ppi River. In the spring of 1855 we had lithographed plats, including this general plat, of all these lands, and had attached to it a pamphlet, which were scattered all over the country. In 1853 we offered these lots for sale.

Q. State what you know about section 27; whether it was included within this levie; whether any of it was inside or outside of these levies.

A. When I went there in 1851 there was about 6 acres of that
68 section 27 still in existance. The old Mississippi levie extended over it, and that 6 acres remained there till 1857. I have the survey of the county surveyor. I know, of my own knowledge, that 6 acres of it was there in 1857.

Q. That would be inside of where the original levies were?

A. Yes, sir. In the summer of 1851 a piece of the levie washed in on section 26, and the crevas'e levee was built in the winter of 1852 by Mr. Cochran, under the direction of our engineer, which cost about $5,000.

Q. Go on and state what was done with reference to these levies, and describe what they are; what is the extent of them.

A. After they were built there was a good deal of money expended on them to keep them in repair. They required constant work up to 1854 to keep this ground from inundation.

Q. State who claimed to owne the land, and how notorious that claim was.

A. They had the Sun newspaper, in which it was stated——
69 Q. You ne'dn't tell what the newspaper stated.

A. Our acts of ownership were notorious and public. It must have been known by everybody living in the town. In addition to my riding round telling persons, there was our engineer party, consisting of 15 men. There was not an individual living within the levies that didn't know of it. In 1852 I put up advertisements warning people not to trespass upon these grounds. A great portion of these levies were where there was no timber, down at the point; but there was 100 feet cut out through the timber where it was thick. For half a mile on the Mississippi and the whole of the Ohio levie was where there was no timber; but there was a place in the timber where it was cut out from 100 to 150 feet, cleared away for the levie.

Q. When this land was cleared by choppers, was the timber cleared off pritty clean?

A. Large sycamore trees they generally left. All the good tim-
70 ber was generally cut off. All persons going out there must have seen that the land was cleared off and occupied by somebody.

Q. That was over all these tracts of land in dispute?
A. Yes, sir.
Q. Can you state to the jury, by way of getting at the character of these levies up to the time of the commencement of this suit, to your knowledge, how much was expended?
A. There had not been less than a quarter million of dollars expended up to that time, including the old levies; the work done by the Illinois Central Railroad Company, under our direction. There was at least $250,000 expended, if not more. In 1851 an agreement was made with the Illinois Central Railroad Company.
Q. State what the company did.
A. The Illinois Central Railroad Company made an agreement with the trustees of the Cairo City property.
Q. State what they done.
A. They laid large levies, about 80 feet wide on the top, over all the disputed ground, surveyed it, and laid it out, but didn't actually
71 commence work until 1854 upon this ground, but did a large amount of work upon these levies. The Central R. R. Co. must have expended within these levies, prior to 1854, at least $100,000 for the trustees of the Cairo City property. This contract with the railroad company signed by Robert Schuyler. I know his signature. (Contract exhibited.) That is the seal of the company; that is his signature. I am familiar with the handwriting of Davis & Taylor; that is theirs. A subsequent agreement was made in 1855, signed by Mr. Osborn for the Central Railroad Company. I am familiar with his signature, and believe that to be it. (Referring to signature.) That is the seal of the company. In pursuance of these agreements the railroad company went on and laid out these levies, but didn't do any work on part of these grounds prior to 1854, but did upon the Ohio levie. The consideration for that work was the ground we deeded to the Illinois Central Railroad Company.
72 (The contract refer'ed to was here put in evidence by the defendants, subject to objections.)

Testimony of Green P. Gordon.

GREEN P. GORDON sworn and examined by Mr. Edwards on behalf of the defendants.

Q. What is your age?
A. I am 51.
Q. Where do you reside?
A. In Pulaski County, Illinois.
Q. Are you acquainted with the property in and around Cairo?
A. Yes, sir.
Q. How early were you acquainted with Cairo?
A. Ever since I can recollect. I was raised in the county of Alexander.
Q. Look at this map, (map D;) that is the map you made?
A. Yes, sir; I believe it is.
Q. Are you acquainted with these lands by actual survey?
A. Yes, sir.
Q. What is your occupation?
A. I was county surveyor of Alexander County about 12 years ago, in 1848 or 1849—somewheres along there.
73 Q. State who was exercising control over these tracts of land in dispute, and over the city of Cairo, and what acts were done by any persons claiming to be the owners of the land.

A. I have been out upon that land and in the city of Cairo ever since I was able to ride a horse. I was there when the Birds occupied the place, from 1837 to 1840 and up. I think in 1837, '8, '9, & 1840 D. B. Holbrook was representing the whole interest for somebody.

Q. Was he representing some company; if so, what company?

A. The Cairo City and Canal Company was the name it was known by.

Who claimed to own all these lands in controversey, and what was done by those parties?

A. From 1837 to 1841 the levie was built around the Ohio River, inclosing a large section of country—as much as 1,700 or 1,800 acres. I think I have measured it.

Q. By whome was that made, and was it made under claim of title?

A. Mr. Holbrook was doing the work. It was done under his
74 supervision. There were a great many houses put up there. I was a boy at that time. They were built under the direction of Mr. Holbrook. In 1840 and 1841 it was kind of stopped. There was very little improvement made there from that time down to 1850 or 1851.

Q. Do you recollect when Mr. Gilbert went down there?

A. I don't recollect exactly; I think, in 1843.

Q. State whether he was exercising acts of ownership from that time on?

A. My impression is that he did; that he was paying the taxes. I think it was in 1848 or '9—in April or May. I was there and he got me to make out a list of the property in that county. The sheriff had his office with me at that time in Thebes.

Q. Does that map (D) show how is with section 27 there? (Pointing.)

A. I made the map in 1851, and was at that time county surveyor of Alexander County.

Q. Do you or not know, of your own knowledge, at that time whether part of section 27 was within the levie that was built there?

75 A. There was about 50 acres of section 27 in the original survey, and the first levie built there run out pritty near to the river and would include a part of section 27. I obtained the original field-notes from the office at St. Louis, up to March last. When I made this survey, the corner of 22 and 26, when I came to measure it, going up to the township line and down to that corner, (indicating on map,) the corner was not there; the falling in of the bank had taken it away.

(Witness indicates on the map where he run his survey, but it could not be made intelligible, because points disegnated "here" and "there," &c.—REPORTER.)

Q. State whether any part of section 27 was left there in 1851.

A. I think this map represents it just as I found it. I believe there was in the original survey $21\frac{72}{100}$ acres there, (pointing.)

(The map marked "Exhibit D" was put in evidence by the defendants.)

76 Q. How much of section 27 was within this old levie?

A. I don't think I could tell definitely; but the levie was close to the river-bank. There was about 50 acres in 27, by the original survey. The levie ran near the river so as to leave most of the 50 acres within the levie.

Cross-examination by Mr. Grimshaw:

Q. This is your designation of what was left of section 27, in 1851, (indicating on the map the point refer'ed in the question.)

(Witness explains what the lines on the map represent.)
Q. How much land was left in section 27?
A. I don't know, because I never defined it.
Q. A very small amount of the 50 acres, was it not?
A. I could not say. I don't know how much there was.
Q. Was there any of it there?
A. I think the map is a correct representation of it.
Q. What scale is that?
A. Two inches to the mile, I suppose.
77 Q. You spoke of there being two or three acres here, (pointing to piece refer'ed to;) that has nothing to do with the small tract in 27, has it?
A. No, sir.
Q. How long since you have been upon that ground?
A. This winter.
Q. Do you know whether there is any of 27 left now?
A. No, sir; I don't know.
Q. In 1837 when you went there, or in 1844 and 1845, Gilbert or Taylor were not occupying section 27, out in the water then, were they?
A. They were occupying the point there.
Q. Did they ever occupy any of 27 at all? Did not the Mississippi cover most of that 50 acres of that original survey?
A. They seemed to exercise authority over all the ground there.
Q. Did they exercise jurisdiction over the river? Did not all of that 50 acres except that little fragment you have indicated lay out in the Mississippi in 1851?
A. That map represents it correctly, sir.
78 Q. You stated there were about 1,800 acres inside these levies?
A. It seemes to me there was that amount.
Q. Where were buildings you spoke of?
A. There were little buildings all over around in the woods up and down both rivers.
Q. What buildings were on this land in dispute?
A. I don't know all the names of the parties.
Q. Do you remember a single building upon 35, 26, or 27?
A. There were cabins there all along both rivers. In running down this line (indicating on map) there were cabins on both sides of the line, east and west and north and south.
Q. What sections?
A. There was one cabin between the corner here and the river in sections 35 and 26.
Q. Was it in 35 or 26?
A. One on 35 and one on 26. That was in 1851.
Q. When did you first know of those cabins being there?
79 A. I don't know the exact time; they had been there some little time.
Q. Do you know who was living in them at the time?
A. I think it was Mr. Gatlin, and I believe his mother-in-law, Mrs. Lee. I don't recollect which side of the line they lived on; the improvements run onto both.
Q. Do you recollect whether there was any cabins on 27?
A. Clear up the river there was several cabins.
Q. Were they on section 27?
A. I don't recollect.
Q. Do you remember any other cabins on this disputed land?

A. Yes, sir; up the Miss. River there were cabins.
Q. Were they not above this land?
A. No, sir.
Q. This was along in 1851?
A. Yes, sir.
Q. Was not the bulk of the settlement down at the point?
A. There was some pritty good buildings along the Ohio River right opposite, across from these lands.
80 Q. When you run those lines what sort of an instrument did you use?
A. I ran them with a field-compass.
Q. Did you turn your compass and look at any of this land?
A. It was all a dense forest at that time.
Q. Was there any part of this land except upon the river-bank that you could turn your compass and look at?
A. Yes, sir; along the Ohio there.
Q. Was not this disputed land at the time you went there in 1851 all a dense forest, all of the south half of 26?
A. No, sir; there was a little of it cleared up; little patches; one considerable field. I think a man named Greg lived there.
Q. Was not that the Gatlin place?
A. I could not tell.
Q. Was that on 26?
A. It occures to me that was below the line; there was considerable cleared up along the Mississippi River. I don't know whether Greg was occupying it at that time or not.
Q. Was not the bulk of this land in controversey timber-land?
81 A. I could not turn my compass at that corner (pointing on the map) and look at the river; the cleared land was up and down the Ohio River.
Q. Was the south half of 26 cleared up, or was it timber?
A. I don't recollect; there was more or less cleared up along where those cabins were up and down the river, some outside and some inside the levie.

Redirect examination by Mr. Edwards:

Q. This levie that runs across these tracts was not the land cleared up on each side of that levie?
A. Yes, sir; when the levie was made it was cleared off each side. Where all these cabins were there was a little field cleared up, some small and some large.
Q. Is it not true that coming up from the point this way the timber was gradually being cleared off?
A. Yes, sir; the timber was cleared off upon the levie.
Q. How wide was that clearing upon the levie?
82 A. Some places wide, some places narrower, some places not more than 100 feet; I could not say exactly.

Testimony of Matthew Joiner.

MATTHEW JOINER, being duly sworn and examined on behalf of defendants, testified as follows:

Q. Where do you live?
A. I live in Saline County.
Q. Where did you live from 1840 to 1845?
A. In the spring of 1843 I moved to Cairo, and remained there most of the time until 1857. Some portion of the time I was on the river.

Q. Did you cut any fire-wood or cord-wood inside the levees spoken of at Cairo?

A. I cut a good deal of cord-wood from 1843 to 1853, or had it cut.

Q. Did you have a contract to cut wood?

A. Yes, sir; the first contract I had was with Mr. Gilbert, in the summer of 1843.

Q. What was the nature of that contract?

83 A. I was cutting wood inside and also outside the levees whenever it was convenient. I paid him for timber on th' inside of the levees 20 cents p'r cord; on the outside 15 cents.

Q. During this time did you cut a large amount?

A. Yes, sir; a great deal. I could not say how many I cut for several years.

Q. Afterwards did you renew that contract?

A. About 1851, I made a contract with Mr. Taylor, after Mr. Gilbert's time was out.

Q. When you made the contract with Mr. Gilbert, in what capacity acting?

A. He was acting as the agent of the Cairo City and Canal Company; so I understood.

Q. In what capacity was Mr. Taylor acting?

A. For the trustees of the Cairo City property.

Q. Under these two contracts you cut wood?

A. Yes, sir; after Mr. Taylor came there I cut a good deal above the cross-levee as well a' below, because the wood was getting scarce below the cross-levee—such as would make steam.

Q. How far above was the cross-levee?

84 A. About ¾ of a mile on the Miss. side; not so far upon the Ohio, not over a mile there from the extreme point.

Q. Was there anything said at the time you took this contract, or while you were cutting wood, about the object of your cutting the wood?

A. I don't know how that was. Mr. Gilbert requested me to take the timber off as clean as I could; that he wanted to get the timber off the land. There was a portion of the timber at and above the point that had been taken off pretty well.

Q. Where was you cutting principally?

A. On the Mississippi, both inside and outside the levee, until after Mr. Taylor came there; then I *could* a good deal about the cross-levee.

Q. Did you cut on the Miss. River entirely up?

A. Yes, sir; clear up to the cross-levie, wherever we could find timber fit for steam-wood.

Q. Do you recollect these clearings that have been spoken of, along the Miss. levee?

85 A. Yes, sir; I have some knowledge of them. There were several little clearings along the levees; some of my choppers built little cabins there 1844–5, and '46. I gave them the privilege myself, having a contract with Mr. Gilbert, to erect shanties there.

Q. These shanties along the Miss. levee clear up to the cross-levee, were they all erected by your choppers?

A. There were no other shanties in 1844, 1845, and 1846; afterwards there were others built. Capt. Gray and a man named Simmons made a little improvement there, and also a man named Jeffris, and several others. I don't know how they came to build up there. That was after I commenced chopping.

Q. Was there any wood chopped around these shanties that your hands built?

A. Yes, sir; but none only by my choppers.

Q. Some of the shanties were on one side and some on the other side of the levee?

A. Yes, sir. Mr. Strevell had a shanty right on top of the levee.

Q. What kind of timber did you cut?

A. Principally cotton-wood, some box-alder.

Q. Did you take them pretty clean?

A. A great many would not make wood. We took most that
86 would make wood; we extended over all the land in there.

Q. When you first commenced cutting, was there a good deal of timber there?

A. Yes, sir; an unusual amount of it. We cut it off pretty clean—all that would make steam-wood.

Q. Did that chopping extend over the whole time?

A. No, sir. I sold out in 1847 to Mr. Sayer; he cut on till I bought him back again. I understood he chopped the same as I did; I understood it from him. He was buying the timber of Mr. Gilbert. *He.* It must have been in the latter part of 1848 when I bought him out again, or spring of 1849. Mr. Sayer is not now living; he died at Cairo.

Q. Was it notorious that Mr. Gilbert first, and then Mr. Taylor, exercised acts of ownership over this land while you were there?

(Objected to as leading.)

A. Yes, sir; I didn't know of any other persons acting as owners of the property or exercising acts of ownership over it, or claiming title to it.

Q. You didn't chop any after 1854?

87 A. No, sir; I think it continued up to 1854, after I bought Sayer out.

Cross-examination by Mr. Grimshaw:

Q. What land did you chop on?

A. I have already stated we chopped on all land where we could find any wood to chop; from the point up to the cross-levee, and inside and outside the levee.

Q. When you got through chopping, was it not still dense forest?

A. Yes, sir; heavily timbered with sycamore and elm, and timber hat would not make steam-wood.

Q. From the point up to the cross-levee you took the cotton-wood and left the sycamore and elm?

A. Yes, sir.

Q. Was it not a dense forest up to 1862-'3?

A. I don't think it was; they commenced clearing it off shortly after Mr. Taylor came there.

Q. What time did you make your agreement with Gilbert to cut timber?

A. Some time in 1843, after the high water that year.

Q. There was water over the point in 1843?

88 A. Yes, sir; inside the levee. We chopped some wood during that year.

Q. Do you know the lines of the land in dispute?

A. No, sir.

Q. What was your arrangement with Gilbert?

A. That I should cut wood wherever I could find it, and pay him 15 cents outside and 20 cents inside the levee.

Q. Did you pay him?
A. Yes, sir.
Q. How long did Gilbert stay there?
A. I don't know what year he left.
Q. Was he there in 1843 at all?
A. I think he was.
Q. Was he there, then, in 1844.
A. Yes, sir.
Q. Was he there in 1845?
A. I think he was. I think probably in 1847 he went to St. Mary's.
Q. From 1847 to 1851, when Taylor came there, was there anybody there asserting any right to that property?
A. Yes, sir. I frequently paid Mr. Corcoran for wood; he was watching over it occasionally for Mr. Gilbert. Mr. Gilbert would pay
89 me when he would be down.
Q. After you got through cutting this wood, was there not still a dense forest within a quarter of a mile of the point?
A. No, sir, I think not. A mile off it would look like the timber was thick.
Q. How far was it from the nearest point of this land in dispute to the Ohio levee?
A. A half mile, perhaps, more or less.
Q. How wide a strip of timber was cut, up to 1851, between this land in dispute and the Ohio levee?
A. It was nearly a half mile, when I went there, cut off pretty clean.
Q. I want to know how wide a strip was cut off, up towards the Ohio levee, up to 1851.
A. I think from the point up to the cross-levee there was a half-mile cut off on the Ohio side.
Q. Would that go on this land?
A. I don't know.
Q. The original settlement there began on the Ohio?
A. Yes, sir.
Q. Building commenced there first?
90 A. Yes, sir; I don't think there was any building on this land in dispute when I first went there; I don't know, certain.
Q. Were there any buildings on the Ohio side when you first went there?
A. Yes, sir.
Q. Did not that state of things exist up to 1850?
A. No, sir; there was none of it entirely cleared up until Taylor went there. Where Greg and Simmons improved it was cleared up, but no where else.
Q. Was there clean cutting until Taylor went there in 1850?
A. We didn't cut timber off clear when we cut steam-wood.
Q. At the time Taylor came there, in 1851, was not that a complete forest?
A. There was a good deal of timber left on it.
Q. Did anybody "hook" any timber off that land?
A. There was hooked about Cairo, but I was not in partnership with them.
Q. Was there not promiscuous cutting all over that land?
A. No, sir; I think not.
91 Q. Did you never know of anybody getting wood there and not paying for it?

A. Never any steam. I suppose they did fire-wood, but they didn't have to go away back there to get it.

Q. Was there any difference between fire-wood and steam-wood; could you tell any difference?

A. If it was marked "hooked," I suppose I could.

Q. Where did those grocers and others living down at the point in 1851 get their wood?

A. I could not say.

Q. Didn't they cut it all over there?

A. I don't think they did; I don't know.

Q. Did you cut any in 1847?

A. The man I sold to cut in 1847, he said.

Q. How long were you gone from Cairo after you sold out?

A. I was not away from there a year at any time. I bought him back in the latter part of 1848, or early in 1849. I bought back some of the same timber I sold him in boats.

92 *Testimony of Henry Whitcamp.*

HENRY WHITCAMP was next sworn and examined on behalf of defendants; he testified as follows:

Q. Where do you reside?

A. In Cairo, and have lived there since 1842.

Q. Do you know Gilbert and Taylor?

A. Yes, sir.

Q. Do you know in what capacity Mr. Gilbert was acting in 1843, and from that time on, in relation to the Cairo property?

A. I do not.

Q. Were you acquainted with Mr. Gilbert at that time?

A. I had not much acquaintance with him.

Q. Did you ever have any contract with Mr. Gilbert or Taylor about cutting wood off this land, from 1851 to 1858?

A. I had with Mr. Taylor; none with Mr. Gilbert.

Q. Did you cut any wood under that contract?

A. Yes, sir.

Q. Where did you cut the wood; inside or outside the levee?

93 A. Mr. Taylor gave me the privilege of cutting inside or outside of what was called the cross-levee.

Q. Did you cut in any particular places, or any place all over the land?

A. In any place where we could find timber.

Q. How many men did you have with you?

A. Sometimes 8 or 10; sometimes 2 or 3; som'times none. We cut cotton-wood, box-elder, sometimes ash and pecan, such as was fit for steam-wood.

Q. Did you ever know anybody else exercising control, or attempting to exercise control, except Taylor and Gilbert?

A. I didn't know of anybody else.

Q. What object did Mr. Taylor have in getting this wood cut?

A. It was to clear it up and build a town there.

Q. How much wood did you cut during the time?

A. A large amount; I could not say how much.

Q. Were you engaged in any other business while there?

94 A. I had a number of hands and I kept a dry-good' store there.

Q. You had those hands cutting wood under you?

A. Yes, sir.

Cross-examination by Mr. Grimshaw:

Q. Do you know about the time the Illinois Central Railroad Company began to work there?

A. I think it was after 1857.

Q. You didn't commence cutting until after Mr. Taylor came?

A. No, sir.

Q. Did you never cut any before you had that contract?

A. No, sir, except for fire-wood, when we lived on the river; then we cut wood whenever we wanted it for fire-wood.

Q. Where did the rest get fire-wood?

A. I don't know.

Q. You don't know whether they went out on this disputed land and cut or not?

A. No, sir.

Q. Did you ever see Gilbert about Cairo?

A. Yes, sir.

95 Q. What was he doing?

A. I can't tell you.

Q. Did you see him do anything?

A. I never saw him at work with an axe or shovel, or cutting wood, or handling a wharf-boat; he was tending to his business, I think.

Q. When Taylor came there he did actually take control.

A. Yes, sir.

Q. That is all you know about the actual control of the property until 1851, what you saw of Gilbert?

A. Yes, sir.

Q. When did you go to Cairo?

A. In 1842.

Q. Didn't the buildings sort of lay round loose from 1842 to 1851.

A. It was a down place when I first came there. I think a man named Lyles controlled the place.

Q. Did you own a house there at the time?

A. I lived on a boat, like a good many other people.

Q. They kept hotels on boats then, didn't they?

A. Yes, sir.

96 Q. Didn't the town run itself with no apparent control by anybody—all that land, at the time you went there, until 1851, when Taylor came there?

A. I can only say what I have said. Mr. Gilbert was there occasionally, I supposed, to control the place.

Q. Did he collect any wharfage from you?

A. No, sir. I think he wanted to collect it once, when the boat was owned by Gordon. He went over the river one spring and came back in the fall. He wanted to get clear of paying wharfage. I was living on the boat at the time.

Q. Did he pay him any wharfage?

A. No, sir; not that I know of. I paid to Mr. Taylor afterwards. I had a boat myself then.

Q. After 1851, things took a different shoot?

A. Yes, sir.

Q. Taylor began to control it then?

A. Yes, sir.

Q. Did you ever rent any house of Gilbert?

A. No, sir.

Q. Or cut any wood under him?

A. No, sir.

Redirect examination by Mr. Edwards:

97 Q. You say Taylor was recognized as an agent. Was not Gilbert recognized in the same way?

A. I could not say that.

Q. Did not Gilbert call upon you for wharfage, and didn't you decline to pay it because you were not the owner of the boat?

A. It was not my boat; it was Gordon's.

Q. Didn't Mr. Gilbert move to Cairo?

A. To the best of recollection, Gilbert had his family there at one time. I had no business with him.

Testimony of N. A. Devore.

N. A. DEVORE was swo'n, and testified for defendants as follows:

Q. Where do you live?

A. In Cairo. I have lived there for 29 years, last March.

Q. When you went to Cairo who, if any one, was exercising acts of ownership there—claiming the property?

(Objected to.)

Q. Did you ever work for any company there?

A. Yes, sir; for the Cairo City & Canal Company, clearing off the grounds for the Mississippi levee.

98 Q. When were those leve's put up—after you came there?

A. They were at work at them when I went there.

Q. Do you recollect when Mr. Gilbert went there?

A. In 1843. I think he moved his family there in 1843.

Q. How long did he remain there?

A. I don't recollect; some 3 or 4 years, I think. After he moved his family away he was back and forth there.

Q. What was he doing there?

A. He appeared to be attending to the business of the Cairo City & Canal Company there. It seemes to me as if he was collecting rents. I bought a house of him in 1848.

Q. From whom did you purchase the house?

A. From the company. He built that cross-levee during the time he was there. I don't recollect just the time.

Q. Do you know of his making any contract with persons about wood?

A. No, sir.

Q. Did you know of persons cutting wood there?

A. Yes, sir. I don't recollect having any conversation with
99 them about who they were cutting under. Mr. Taylor came there in 1850 or 1851.

Q. Did you know of any one else assuming to exercise any acts of ownership or control over this property within or without the levees or of the lands in controversy, except the canal company or the trustees of the Cairo City property, from the time Mr. Gilbert came there to the time of the commencement of this suit?

A. No, sir; I don't know of any others.

Q. Do you know by whose permission, or whether there was any permission given the residents of Cairo to cut firewood; if so, by whom that authority was given?

A. I can't say I had the privilege from them to cut fire-wood, all I wanted; that is, down timber. I got permission from Mr. Gilbert. I think that is the way they all got their wood.

Cross-examination by Mr. Grimshaw:

Q. Do you know this land in controversy?

A. I reckon I know a portion of it.

100 Q. Did you ever cut any wood on that land with Gilbert's permission?

A. I don't think I did. I was not in the wood business.

Q. What did you ever know of Gilbert's doing, except to sell you that house?

A. At one time he was attending to some stock there was in a carpenter-shop there. He was selling some of the material that belonged to the company.

Q. He was selling out and quitting?

A. Not that I know of.

Q. What was he selling the material for?

A. I don't know; good deal of it was steamboat work. There was no call for it at the time.

Q. Was there not a time between 1846 and 1851 when that place was abandoned by nearly everybody?

A. No, sir.

Q. Who was doing anything for the company?

A. There was no work going on for a time, but Mr. Gilbert was back and forth all the time.

Q. Was it an unus'al thing for other men to be back and forth?

101 A. No, sir.

Q. During that interval before Taylor came, didn't people do pretty much as they pleased—occupy the houses, cut wood, &c.?

A. I don't think they did. I think Mr. Jorden did most all the cutting there.

Q. How was it about this 10-acre tract inside the levee?

A. Some folks moved on what was called the "depot-ground," that didn't pretend to belong to Taylor and Gilbert. I think Mr. Cocran acted for the company in the absence of Mr. Gilbert.

Q. How near were those buildings from the disputed lands?

A. The buildings, such as they were, were down on the Ohio levee half a mile from these disputed lands. In 1840 to 1850, there was some shanties built up there at the time the Miss. levee was being built.

Q. They were occupied by any person that wanted to take possession of them?

A. I can't say about that.

102 Q. Did you know who lived in them?

A. No, sir.

Q. You knew Gatlin?

A. Yes, sir; he lived below the crevasse levee. Before he went there he lived over on the depot-ground.

Q. Then he moved around on the other side where Grey lived?

A. Yes, sir.

Q. Did you ever do any work upon these levees yourself?

A. I helped clear the ground probably 100 feet from the Ohio on up.

Q. Did you ever help repair them afterwards?

A. No, sir.

Q. Do you know who did?

A. Mr. Cocran repaired the crevasse levee, I think, but I don't recollect what year.

Q. Had there not been work done there by the citizens?

A. They might have gone out and throwed up a little in high water to keep the water out.

Q. Have you not known of your neighbors going out and fixing the levee previous to 1857?

103 A. I think in 1844, under Lyles, who was agent, we all worked upon the levee at one time.

Q. Did you get paid for it?

A. I think so.

Q. Did you know of any citizens doing work upon them they didn't receive any pay for, after that?

A. I don't know any thing about it.

Q. Did you not build a house, that was not built under the company, inside the limits of Cairo prior to 1854?

A. I built a house outside the levee on the Miss. side. I built it by permission of Mr. Gilbert, in 1848 or 1849. I bought the house of Gilbert and put it there.

Q. That is not on the disputed land?

A. I think it is below it.

Redirect examination by Mr. Edwards:

Q. You say by permission of Mr. Gilbert; that was when he was acting as agent for the trustees?

A. Yes, sir.

Testimony of Patrick Corcoran.

Defendants next called PATRICK CORCORAN, who testified that
104 he has lived in Cairo since 1839. The levees on Ohio and Mississippi Rivers were commenced in 1840. Work on levees began in south end of the city, and worked up both rivers to point where cross-levee began in fall of 1843, and was completed in spring of 1844. The levees enclosed the land for the protection of the city from overflow of water. The first contract for levees was made by Cairo City and Canal Company, and was only for levees on the rivers. Mr. Brooks, the engineer of City and Canal Co., had charge of the work. It was notorious that Cairo City and Canal Co. built the cross-levee.

The foundry of Wm. Bellows & Co. was not on the land in dispute. Witness had a contract from Mr. Taylor to build a portion of the crevasse levee; commenced work in 1850, and completed it in 1851; contract was made with Captain Long, engineer for Taylor and Davis. Gilbert moved to Cairo in 1843, and went away in 1846; he acted as agent first for company, and then for Taylor and Davis, trustees.

Witness had charge of buildings (not, however, on disputed
105 land, but on adjacent land) in latter part of 1846, under Gilbert, and continued to act as agent under him until 1850, when S. S. Taylor came, and he still acts as agent. Witness had charge of about 15 buildings, some of them outside levee, but not on disputed land. No one lived in Cairo claiming property in 1846; ten acres inside levees, but not on disputed land, was claimed by the State.

Witness and Shaughnessy lived on that 10 acres, and claimed it under charter of Illinois Central Railroad Company. Part of the ten acres is now owned by said railroad company and part by trustees of city of Cairo. Understood that railroad was to build levees round Cairo; that they got authority to build levees from Taylor and Davis. This was said by the chief engineer of the railroad company while building the road.

Land inside levees was pretty well cleared off. Joiner cut wood there. So did Whitcamp under Taylor and Davis. Other people also cut wood.

On cross-examination, witness testified that crevasse levee is on
106 S. ½ of section 26, foundry on section 25; small amount of work done on levees before 1840. The object of levees was to keep the water out. The water was over the town in 1840; also, in 1849. The cross-levee was washed down in 1849. Ellis & Jones repaired levees in 1850. Witness was at work for Broderick & Thrupp, contractors under Illinois Central Railroad, on these levees, in 1852 and 1853. Ellis, Jenkins & Co. were original contractors; Broderick and Thrupp were subcontractors under them. After principal contractors failed Broderick was contractor, and did a large amount of work for Illinois Central Railroad Co. He made all the levees south of the cross-levee. The railroad company also built the levees above old cross-levee to junction of Ohio and Mississippi levees. The old cross-levee is not needed now; it is down. The railroad levees are sufficient protection from water. Gilbert was not living there from 1846 to 1850; he was there now and then. Witness lived on the ten acres spoken of, and did not for Taylor and Davis, or any one else; he, Shaughnessy, and others
107 claimed to occupy the ten acres on their own hook in 1843, and continued so to occupy until 1854, when they moved off these ten acres here inside of old levees. There were about 15 families living during that time on their own hook in said ten acres, and employing counsel to protect them both from claims of railroad company and city company. There were 40 or 50 families at Cairo from 1846 to 1850; they paid rent or not as they pleased; some of them held under Gilbert. None of the houses were on or near the land in dispute. There is one building on land in dispute; it was put there in 1856. Thinks that, except cutting timber, no improvement was made or land in dispute before 1854. Four of five years ago there were streets similar to roads opened across it. The street I mean ran from river to river. Broderick did work on levees under Illinois Central Railroad Co. in 1852; 1853 the curved levees were made by R. R. company.

On re-examination, witness stated that there were persons outside of the above ten acres who held under the said road company. The
108 railroad levees cut up all the old levees and moved them back to make a railroad track.

Witness further states that the people who lived outside of the 10 acres were below it, down the river, south of section 26.

Testimony of Miles A. Parker.

1st. Plaintiff here introduced MILES A. PARKER, who was sworn, and testified on behalf of plaintiff as follows:

Q. Where do you live?

A. In Cairo, and have lived there since 1846, except a short time I was gone, about six months, in 1855.

Q. Do you know this land in controversy?

A. I am not acquainted with the lines; I have a general knowledge of the lands inside the levees.

Q. What business did you engage in when you went there?

A. I went to work for Mr. Smith in 1847, farming. I boarded with him between 11 and 12 and *and* Poplar and Commercial streets, over towards the Ohio River.

109 Q. Was there a farm around there at that time?

A. No, sir; not when we lived. Between where we lived and the levee it was cleared off; where I farmed was below there—below Fourth street, down to the point; that was in 1847 or the spring of 1848.

Q. How much land did Smith cultivate?

A. I suppose about 15 acres; that is, down where the post-office is now, commencing about 4 or 5 streets and running about to 3 street, where Mr. Gilbert now lives.

Q. What was the condition of this disputed land at this time?

A. It was timber-land all back from Commercial avenue over to the Mississippi.

Q. How long did it continue be timber-land?

A. Until about 1852 or '3, when Mr. Taylor began cutting the timber off.

Q. State whether before that any person appeared to be controlling this timber-land?

A. The first I knew of any one controlling anything was when Taylor came there in 1851. The first I knew of Mr. Taylor was by his
110 giving notices to pay wharfage and rents; I think that was in 1851.

Q. What was you doing there?

A. Selling wood for Mr. Joinder, who is the witness.

Q. Did you know Joinder buying wood there of Taylor, or Gilbert, or any one else?

A. No, sir.

Q. How was he getting his wood?

A. He commenced cutting some wood back of the peice that was cleared, and cut back about a quarter of a mile from where the timber commenced, in the latter part of 1852 or '3. We didn't cut quite as far back as this disputed land. I was selling the wood for Joinder. I attended to his business, in his absence, from the latter part of 1852 to 1854. When he lived out on the Dickey place I took up wood for him and had it carried to the river in the wood-boats and sold it to the steamboats. I would go and receive the wood the men would cut.

Q. Where did you receive the wood in 1852?

A. Back on Washington avenue and Walnut street.

111 Q. Would that fall in this disputed land?

A. I don't think I ever got up so high in taking out wood for Joiner. I cut some wood for Mrs. Lee when Gatlin lived on the crevasse levee in 1853 or '4.

At the time you cut that was it timber between there and the Ohio levee, or was it cleared off?

A. There was timber from there down to the Ohio River just back of Commercial avenue. Taylor commenced cutting timber there in 1853. I knew the timber remained there until 1852.

(Commercial avenue pointed out on the map by witness.)

Q. Who authorized you to cut wood just above Gatlin's there?

A. I had it cut myself. Nobody authorized me. I cut wood for myself just above the crevasse levee on the Miss. side.

Q. Did or did not the timber continue nearly over to the railroad land?

A. The timber run over there to between Commercial and Washington avenue' as *as* they are noted.

Q. How far would that be to the right of the railroad?

112 A. You mean from the Ohio levee how far was it back to the timber at the time I speak of?

Q. Yes, sir.

A. I suppose, take it from the upper depot, it was a quarter of a mile. Some places it was cleared out further.

Q. That was up to 1851?

A. I don't think they commenced cutting timber until 1852 or 1853.
Q. Then it was a forest over to the Miss. River?
A. Yes, sir.
Q. You say in 1852 you cut wood near the crevasse levee?
A. I think it was in 1854 Joiner had some wood on Cash Island, up above there, some of it scattered out in the woods.
Q. When you were doing business for Mr. Joiner, did you keep an account of the number of cords of wood he got, and from whom he got them?
A. No, sir.
Q. *If* you took the wood up and measured it and paid the men for the wood?
113 A. Yes, sir.
Q. What wood did you ever see cut that Joiner had on this disputed land?
A. I don't know that I ever saw any. There might have been some, and there might not.
Q. When did you quit business for Mr. Joiner?
A. In 1853 or '54.
Q. Up to that time you don't know certainly that you ever took any wood up from this disputed land?
A. Not that far out. I don't think I did.
Q. Was this little house Gatlin lived in built afterwards?
A. No, sir; I think it was built before that. I think Simmons and Gray built it.
Q. Under whom did they profess to hold?
A. I heard Simmons speak of it when he was in possession of the place. He said he allowed to hold it; he claimed it as vacant land, or that he was going to hold it under pre-emption right.
Q. What was Gatlin's claim to the land he lived on? What
114 did you hear him say while in possession?
A. I don't know that I ever heard him say anything about it while he was in possession.
Q. You did hear Simmons say he allowed to hold that himself?
A. Yes, sir; he had a fence run up the Miss. River at the lower end of the crevasse levee.
Q. About what time did you hear Simmons say that?
A. In the latter part of 1849 or 1850; it might have been 1848.
Q. Before Gatlin went on the place?
A. Yes, sir. I hauled those rails away for Simmons.
Q. How did you haul that wood away that you cut for yourself?
A. With cattle, down the Miss. levee. We sold the wood on the Ohio down at the point.
Q. Why didn't you go across there?
A. There was no road. There was timber there until 1852. We hauled down the Miss. levee, then up the Ohio. I suppose it was
115 a quarter of a mile further round the levee than through the woods.
Q. That was open, I suppose, along the Ohio?
A. Yes, sir.
Q. Was not that the place where these buildings were?
A. Yes, sir. The buildings at the point were the McKinney building, some cottages, the foundry, &*co.*, following up the river.
Q. How far were these buildings from the land in controversey?
A. The nearest point to it from the Ohio River was about ¾ of a mile, if I know where the land is. About a quarter of a mile on the river was cleared.

Q. That state of thing continued up to 1852?

A. Yes, sir; until Mr. Taylor came there.

Q. When you went there was Gilbert about there?

A. I didn't know him; I don't recollect seeing Mr. Gilbert there until after Mr. Taylor came there. I don't recollect what business he was there on.

116 Q. Was it or not open and notorious that Miles A. Gilbert was controlling that land?

A. I don't know as he was controlling anything there at that time. After Taylor came there and took possession I know it was visible, because I heard a great deal of grumbling because he was trying to get possession of the property. I think he arrested one man there for not paying him wharfage and recognizing him as landlord.

Q. What sort of population was there before Taylor came there?

A. There were some transient persons, and some had lived there for several years.

Q. Did or did not persons coming there move in and out of those houses at will up to the time Taylor came?

A. I saw persons moving in and out of the house and didn't see anybody hindering them. I didn't hear any talk of hindering them.

117 Q. Did you from 1846 to the time Taylor came see any handbills stuck up there?

A. No, sir.

Q. Any maps?

A. No, sir.

Q. Pamp'lets indicating Cairo was for sale?

A. No, sir.

Q. Was there any visible or apparent control by this thing they call the Cairo City property until Taylor came there in 1851?

A. I didn't know of any one controlling the property.

Q. Had you wharf-boats on the river?

A. No, sir. I had wood-boats.

Q. Did you pay any wharfage?

A. No, sir.

Q. Did you ever hear or know of anybody paying wharfage until Taylor came there?

A. No, sir.

Q. What did you know of this boat of Gordon's being moved away?

118 A. I didn't know anything about Gordon; I knew of Littlefield & Wilson moving boats. Taylor had commenced a lawsuit with them. He tried to eject them from the land. After the lawsuit commenced Wilson sold out to Littlefield, and Littlefield moved it for some reason, I don't know what. That was in 1852 or '3.

Q. Had you known of any one having trouble about wharfage before that?

A. No, sir; not until Taylor came.

Q. Did he demand anything from you for your wood-boats?

A. Yes, sir; once in 1854. Once in a conversation with Wilson & Littlefield, Taylor was talking about having the wood-boats land a certain place, and the coal-boats a certain place, and charge so much wharfage on each; on wood-boats 50. I never paid him anything. He never came to me for anything.

Q. What was said by Taylor about the cost of the wood?

A. In this conversation Taylor remarked that nobody had ever paid him anything for wood. That was the reason he wanted to put

119 on wharfage. I think that was the way the conversation was raised. I recollect he said no one had paid him for any wood.

Q. How many families were living on this 10 acres belonging to the State when you went there?

A. Esquire Shawneesy lived on it, and Mr. Cocran. There was a portion of that 10 acres above and a part below the cross-levee.

Q. How many families were on there in 1846?

A. Shawneesy, Daquere, and some other families lived there in 1846; Gatlin lived above, outside; that was about 1848 or 1849. After that, in 1852, perhaps, he moved around by the crevasse levee.

Q. There were some 5 or 6 families on this 10 acres?

A. Yes, sir.

Q. Do you know under whom they held?

A. I don't know that they held under anybody. I never heard them say.

120 Q. Now about the houses on the Mississippi levee, how many shanties were there when you first went there in 1846?

A. Along in 1847, '8, '9—along there—Jeffries was there. He died in 1850. There were two or three other small houses along there.

Q. Then up there near the crevasse levee Gatlin lived?

A. Yes, sir.

Q. Were there any other houses along that crevasse levee?

A. No, sir; not until 1852. I think Mrs. Lee moved there in the latter part of 1852. Mr. Strivell, I think, lived up at the upper end of the crevasse levee. Along towards the point on the Miss. there were two or three cabins from 1849 up to 1853.

Q. Do you know under whom those people held?

A. No, sir. From the crevasse levee down to the point there were more or less shanties. From 1849 down to 1852 there were houses all along the Ohio.

121 Q. Was there any visible, open, and notorious possession by Miles A. Gilbert of that property at the point; and if there had been would you likely have known it?

A. I didn't know Mr. Gilbert at all.

Q. Did you ever hear anybody speak of renting property of him?

A. No, sir.

Q. When Mr. Taylor came there in 1851 was his possession visible and notorious?

A. Yes, sir; I recollect persons grumbling at his trying to get possession of the property. They didn't like to give it up.

Q. State about the condition of that foundry and other buildings prior to the time Taylor came.

A. It was standing there unoccupied. I think the machinery was gone out of it before I got there. Those cottages were generally occupied. Parties lived in them sometimes a year or two years, and then moved out. I think Mr. Gordon occupied one two years. Mr. Gatlin occupied one the best part of a year. Herald and Joiner occupied

122 a portion of the McKinney block a part of the time, and Gordon occupied a portion of it at one time; also a Mr. Lynch and Rothmoth. It was a large building. A German occupied it as a beer-saloon in the lower story.

Q. To whom were these parties paying rent?

A. I never heard anybody speak of paying rent except Mr. Herald. He spoke of paying rent to Mr. McKinny, who lived in St. Louis. He said he would repair it and take it out of the rent when he came to settle. That building was about one hundred yards from the point, up the Ohio, near where the St. Charles now stands.

Q. What was the condition of these levees when you first came there?
A. I don't recollect.
Q. Were they in a condition to keep the water out?
A. I think they broke in 1849. I was not there at the time.

Cross-examination by Mr. Edwards:

Q. You came there in 1846?
123 A. Yes, sir.
Q. Did you know of Joiner cutting wood there before that?
A. When I came there Joiner was not there.
Q. Did you know of Sayer cutting wood?
A. Yes, sir; in 1847 or 1848.
Q. You say you were working for Joiner in 1853?
A. I commenced in 1850, and worked till the spring of 1854, I think.
Q. When you cut wood after that, what time was that?
A. I think in August I began to cut wood.
Q. You were out there delivering wood for Joiner?
A. I went out there to receive wood for Joiner in 1852 or '3.
Q. When you first came there how old were you?
A. About 20 years old.
Q. You commenced working for Patrick Smith?
A. Not when I first came there. I made corn for him in the spring of 1847 or '48.
Q. Patrick Smith was the milkman?
124 A. Yes, sir.
Q. Were there other persons working on the farm at that time?
A. Yes, sir. Messrs. Jeffries and Smith raised corn together there; also John Egans and Sedgwick Eagan worked above there. He had a little patch of corn.
Q. In 1849 you were not there?
A. Yes, sir; a portion of the time.
Q. You were not there when the levee was repaired?
A. No, sir. I was down the river. I went away in the latter part of 1858, and came back in 1859. The levee broke down in the winter while I was gone. When I came back I went to work for Joiner.
Q. You bought him out in the spring of 1854?
A. Yes, sir; I think it was spring of 1854.
Q. Do you know any of these lands?
A. No, sir.
Q. Can you tell on the map where they are?
A. Somewhere in the boundaries I could. I don't know anything about the description of the land. I know where it lies.
125 Q. You said you drove around the levee from this timber? Was not that because the levee made a good road?
A. Yes, sir; because it was the best way; there was no other road or way without going through the woods, and there was no road that way.
Q. You stated a conversation with Mr. Taylor in which he stated he had got no money for wood?
A. Yes, sir.
Q. Where was that conversation?
A. In Cairo, in a saloon kept by Stewart.
Q. Who was present?
A. Myself, Sam. Wilson, and Capt. John Littlefield.
Q. What was said?
A. Mr. Taylor and Wilson were talking about wharfage. Wil-

son was complaining about his claiming wharfage. He had sued Wilson and Littlefield, and Tayler spoke about the wood and said nobody had paid him for any wood. I think that was in the spring of 1854. I can't tell the month.

Q. You recollect the conversation distinctly?

126 A. Yes, sir; I recollect the conversation with Wilson.

Q. When did you first mention that conversation to any one?

A. I don't remember.

Q. When did you tell Mr. Craig and Mr. Allen?

A. I don't think Mr. Allen ever said anything to me about it. I disremember when I first spoke about the conversation. I think I first mentioned it in 1857 or '8.

Q. When did you first tell these parties?

A. I don't know that I ever told them. I am pretty certain I never told Mr. Allen. I think likely I told Mr. Craig about it when he first came there and asked me if I was pretty well acquainted there. I told him I didn't know much about . In that conversation I told him.

Q. Did you recollect that conversation as soon as Mr. Craig spoke to you?

A. That was more than two years ago. It was the first conversation we had ever had.

Q. Were you ever a witness in this trial before?

A. Yes, sir; two years ago.

127 Q. Did you swear anything of this kind there?

A. Yes, sir.

Q. Be certain about that.

A. I am pretty sure I did. If I was asked it, I know I did.

Q. Did anybody cross-examine you and ask any questions about it?

A. I can't recollect. I think I was asked about it.

Q. Do you recollect seeing me? (Mr. Edwards.)

A. Yes, sir.

Q. And Mr. Logan?

A. Yes, sir.

Q. Did anybody else take part in the trial except Mr. Logan and myself?

A. I don't know. I think Mr. Logan examined the witnesses.

Q. Did Mr. Logan examine you upon that point?

A. If anybody did, he did.

Q. Did you testify anything about this thing on the last trial; if so, who cross-examined you about Taylor having said he never got any pay for wood?

A. I am pretty certain I did state about the wood.

Testimony of C. D. Arter.

128 C. D. ARTER, sworn and examined, testified on the part of the plaintiff:

Q. Where do you live?

A. In Cairo. I have lived there since 1847.

Q. What is your business?

A. Merchandising.

Q. What were you engaged in when you first went there?

A. I went there to stay in Mr. Sayer's store, when 17 or 18 years old.

Q. Where did Mr. Sayer live then?

A. In the McKinny block. The building stood where the St. Charles Hotel now stands.

Q. Where were the other buildings, known as the town of Cairo?

A. There were two towns, lower and upper town. Upper town was where this 10-acre tract is. Then about where 6th street is there was a row of 4 cottages. Up about 9th or 10th street there was a large carpenter-shop on the levee, and two or three cottages in a row, and one or two on the other side of the street, in the rear, near the Ohio River.

Q. Did you know this disputed land?

A. I do not by the lines. I know it generally—all the lands inside the levee.

Q. What was the condition of the land when you went there
129 in 1847?

A. It was all a dense forest.

Q. How far back from the levee did the clearing go in 1847—the Ohio levee?

A. The clearing started in from this 10-acre tract, commenced at the levee, went out past Washington avenue—perhaps not so far at that point. It came down Washington avenue to about 4th street, and then made a little turn down to the point.

Q. Did any one live on this disputed land at this time?

A. No one that I know of.

Q. Was Mr. Gilbert there when you went there?

A. I didn't know him.

Q. When did you first know him?

A. I can't tell when I knew him after Mr. Taylor came there. I don't know whether before or not.

Q. What visible and notorious control did you know of Miles A. Gilbert exercising down around there from the time you went there up?

A. I didn't know of his controlling any of it, neither the cleared land or the forest. They talked of Gilbert being the agent
130 for some of the houses there. I correct myself that far.

Q. Where were the houses?

A. They didn't go back as far as Washington avenue.

Q. State whether when Taylor came there he exercised visible and notorious control over that property?

A. Yes, sir; that was about 1851.

Q. What did Taylor begin to do?

A. He got possession of the property, made them pay wharfage and acknowledge him as landlord. I was out of Cairo 6 or 8 months in 1848.

Q. Until Taylor went there was there *was there* really any one controlling property about that point?

A. No, sir.

Q. How was it about cutting wood out in this forest?

A. Everybody that wanted wood went and cut it. Mr. Sayers and Jeffers cut there. Sayers was in the wood business.

Q. State whether Miles A. Gilbert had sold wood there, or did he have any wood cut?

A. No, sir.

131 A. If he had would you likely have heard it?

A. I presume so.

Q. Who else was hauling wood there in 1847, 1848, and 1849?

A. I think Mr. Sayers was.

Q. What was the condition of these levees when you went there; were they so as to keep the water out?

A. If the water was not too high.

Q. What do you know about repairing the levees after you went there?

A. There was one part on the Mississippi side repaired by other parties.

Q. Was that before Taylor came?

A. Yes, sir.

Q. Was Mr. Sayer in the employ of the company, or anybody?

A. No, sir; he was merchandizing and selling wood then; he had wood inside the levee. His house fronted on the levee and he repaired it as a matter of protection.

Q. Do you recollect when the Illinois Central R. R. Co. commenced work there?

A. I think it was in 1851.

Q. Was not the coming of Taylor concurrent with the beginning of work on the railroad?

132 A. Yes, sir.

Q. What was the condition of these buildings from the time you went there until Taylor came there—that foundry, for instance?

A. There was no machinery left in it; the materials were taken off by the citizens. I took some materials in the carpenter-shop myself, in 1850 or 1851. Whoever would go into a house generally "stuck" until he got ready to leave.

Q. Were they paying any rent for this McKinney block?

A. Mr. Herald paid Mr. McKinney rent; we paid rent.

Q. How about the 10 acres?

A. There were 15 or 20 houses around there; that was Upper Cairo.

Q. Who did they hold under?

A. They squatted there without permission from anybody; that was the talk.

Q. Do you know when this Gray and Simmons improvement was made?

A. No, sir.

Q. Under whom did you understand they held?

133 A. Simmons allways said he was a squatter and was going to hold it under pre-emption.

Q. That is the same place Gatlin went into on the Miss. River?

A. Yes, sir.

Q. Were there any others lived around there on that side?

A. Not so high up.

Q. State whether you ever built a house on that part near the Mississippi.

A. Near the point I did. I built without any authority. I think that was after Taylor came.

Q. How long was it after Taylor came there until the rights of this company were recognized?

A. When Taylor came there he commenced right away to stir them up. There were many that would not submit, or didn't want to.

Q. Do you know Patrack Cocran?

A. Yes, sir.

Q. Were you present when Mr. Edwards read his testimony?

A. Yes, sir; a portion of it.

Q. What do you know of Mr. Cocran acting as agent for Mr. Taylor, the company, or anybody else?

134 A. I never knew him as agent for anybody until I came to Springfield. I have known him ever since I came to Cairo.

Q. How near have you lived to him?

A. I have been intimately acquainted with him. I have been engaged in business there all my life.

Q. What is his business?

A. He has bossed on the works there on the levee.

Q. Do you know of the moving of that wharf-boat across the river?

A. I think that was in 1854. Littlefield owned her.

Q. Can you indentify that as the boat the witness Whitcamp spoke of?

A. It was the only one I ever knew to be over there.

Q. How did you come to know anything about that?

A. There were some goods left on the wharf-boat belonging to parties who had shipped them. They were lost, and they sued Littlefield, and I went on his bond, and there was an execution levied agains tthis property. They run the boat across the river. There was no property found. I waited until Littlefield came back, when he was taken up to the hotel and there surrended the boat to me. That was the reason the boat went away.

Q. How much money did you have in that institution.

A. Considerable; I have forgotten; I was just then starting in business. I think it was in 1854.

Cross-examination by Mr. Edwards:

Q. How long did you remain with Mr. Sayer after you went there as clerk?

A. A number of years?

Q. You got married soon after you became of age, did you not?

A. Yes, sir; I got married in 1850.

Q. When did you first see Mr. Gilbert?

A. I can't tell exactly. I don't think I knew him while I was clerking, but did, I think, before I was married. I knew him from reputation.

Q. Reputation about what?

A. Being agent for those houses, the houses that belonged to what was called the old Cairo City Company.

Q. Gilbert was not living there at that time?

A. No, sir; not that I know of?

Q. After you got married what did you do?

A. I went into business for myself. It was some time after I quit clerking for Sayer, that I got married.

Q. Do you know that Mr. Sayer went out upon the levee and repaired it when it broke?

A. I knew he took hands out, and said he was going to work on it.

Q. You say you built a house there without any authority.

A. Yes, sir.

Q. You say you knew nothing of Mr. Corcoran's agency.

A. No, sir.

Q. Did you ask anybody's permission to take the things out of the house you spoke of?

A. No, sir.

Q. Did you have any claim to it?

A. No, sir.

Q. Didn't Mr. Taylor give you special authority to build that house?

A. No, sir.

Q. You never applied to him.

A. No, sir; I never did, because I thought it would be useless.

Testimony of Granville Gatlin.

GRANVILLE GATLIN was next swo'n, and testified on the behalf of the plaintiffs:

Q. Where do you live?

A. In Alexander County, Illinois, 8 miles up the Miss. River from Cairo.

Q. Did you ever live in Cairo?

A. Yes, sir; I moved there in the fore part of 1846. I just went on to this State land 10 acres.

Q. Under whom did you claim?

A. Under nobody at all, only myself.

Q. Under whom did the others claim?

A. Nobody that I knew of.

Q. Was that 10 acres inside the Ohio levee?

A. Part of it was; the cross-levee ran through it; most of the 10 acres was inside the levee; that was considered State land; any, everybody went into it that wanted to. I lived there until the fall of 1851; then I moved further down the Ohio near the point just above the Mc-
138 Kinny block, near where 6th street now runs. I lived there until 1852; then went down on the Simmons place on the Mississippi, where Gray lived.

Q. Was not part of that improvement on this disputed land?

A. Yes, sir; the biggest part of it was on it.

Q. Was your house on it?

A. No, sir, not at that time; but some four or five acres was. Simmons and Gray made the improvement.

Q. Do you know when they made the improvement?

A. No, sir, not exactly. I was working for them on the wharf-boat at the time it was made.

Q. While they were in occupation on there, did you ever hear them say they held under Taylor or Gilbert, or the Cairo City Co.?

A. No, sir.

Q. Who did you buy of?

A. Of Henry Simmons.

Q. Under what title did you go in there?

A. I went in under the title from Simmons.

139 Q. Did you ever agree to hold that property under Taylor or Gilbert, or the Cairo City Co.?

A. No, sir; I just held it on my own "hook." I held it in that way for very or quite 12 years.

Q. To whom did you pay rent while you lived there?

A. To nobody.

Q. What was the condition of the timber along through there?

A. It was very heavily timbered all around there.

Q. How far did that heavy timber extende over toward the Ohio levee?

A. It continued down a good piece from where I lived. It was 200 or 300 yards from the corner of the 10 acres over to the corner of the timber.

Q. How long, before Taylor came, did they commence cutting and clearing the timber towards the Miss. River?

A. There was no work going on there, no chopping ef any timber before Taylor came, only what people living round there done.

Q. Didn't everybody cut timber just as they wanted to prior to the time Taylor came?

140 A. All I know of cutting timber there, they cut it whenever they wanted to.

Q. Prior to the time Taylor came what did you know of Gilbert controlling matters there?

A. I didn't know anything about Mr. Gilbert.

Q. When you moved down into town from the 10 acres, whose house did you get?

A. I don't know; I held under myself until I left it.

Q. That was in 1851?

A. Yes, sir.

Q. Did you ever have anything to do with Mr. Shawnesce, so far as holding was concerned?

A. No, sir.

Q. Or with Taylor?

A. No, sir.

Q. Or Cochrane? (Cocran.)

A. No, sir.

Cross-examination by Mr. Edwards:

Q. Do you remember the number of the land upon which your improvement was?

141 A. No, sir; I don't know that I do. That improvement that was on this disputed land, the corner of it, could not have been more than 8 or 10 steps from the cravasse-levee.

Q. How far did it extend down the levee?

A. I don't know that I ever measured it. It was 100 or 150 yards. It was a long field running up and down the levee. I suppose it extended some forty steps from the river. There were some three or four acres extended on this disputed land; may be more.

Q. You bought this land from Simmons?

A. Yes, sir; he was owing of me.

Q. Did you get a deed for it?

A. No, sir; I just got his claim for it.

Q. He didn't pretend to be the owner of the land, did he?

A. He said he had it in his possession, and allowed to hold it.

Q. He didn't tell you anything about his buying or entering it?

A. He told me he was holding it under pre-emption.

Q. Were you aware that it required a deed in buying land?

142 A. It has been common down in that country to buy improvements without a deed. I worked upon the place.

Q. Did you assist in clearing this place?

A. No, sir; I worked upon it.

Q. What year was that?

A. I don't remember.

Q. When you worked, they, Grey & Simmons, worked together?

A. Yes, sir; they were partners on the wha'f-boat.

Q. Did you hear them say anything about having permission from Capt. Long to settle there?

A. No, sir.

Q. Do you still occupy it?

A. No, sir. I lived there 10 or 12 years.

Q. What made you move off it?

A. I just took a notion to do it.

Q. Did you take away your fence?

A. Yes, sir; I used what I wanted of the rails.

Q. What became of the balance?

A. The water took off what I didn't use.
Q. What did you do with the house?
A. Sold it and used it on the lot for fencing.
Q. When did the water wash the rails away?
143 Q. Just before I left there. I hauled some of the rails to fence my lot, in town. I never fixed the fence up on that place any more, the water bothered me so much.
Q. When you bought, had Gray and Simmons ceased to be in partnership?
A. It rather strikes me they had. I think Capt. Littlefield was in with Gray at the time.
Q. Do you recollect what you allowed Simmons for the place?
A. I think we had an account of some $50 or $60, which I allowed him.
Q. Did you know of Joiner cutting wood before or after you went there?
A. Yes, sir, I know of his having wood cut there; also Whitcamp and Mr. Sayer.
A. Do you refer to Messer. Whitcamp and Joiner, who were witnesses here?
A. Yes, sir.
Q. Did they cut a good deal of wood right around your improvement?
A. I can't say right around there; they cut a good deal up and down evee.
Q. Didn't they cut about all the wood that was fit for steam-wood cut there?
144 A. There were a good many people cut wood there; they took all they could get; they used to buy all the wood they could get; Mr. Whitcamp, Joiner, and Sayers, they were in the wood business.
Q. Didn't those men cut out about all the wood there that was fit for steam-wood?
A. I don't know as they did.
Q. They cut a good deal, however?
A. Yes, sir; I didn't see them cut any wood myself; they got the biggest share of the wood from the men that did cut it.
Q. Did you know anybody else cutting any wood there?
A. No, sir, I can't say that I did; they were buying steamboat-wood there.
Q. It was visible there had been a great deal of cutting done there, by the stumps left?
A. Yes, sir, but when I went there, there were some places you could hardly get through the timber; they were standing there when I left.
Q. Was there any trees left fit for steam-wood?
A. Yes, sir; there were some hackberries and sycamore. There
145 were a good many standing there in 1854. There might not been a great many of them.
Q. Don't you know that in 1854 they had cut way above the cross-levee in order to get good wood?
A. They cut above the cross-levee from the time I went there, and before, above and below it—Mr. Joiner and others.
Q. You said awhile ago that Whitcamp, Joiner, and Sayer got all the wood that was cut there.
A. That is, as far as I know. But before I went there, when I was down in Cairo, I used to see cutting wood and hauling out above and below the levee; I don't know who did it.

Q. Didn't you state at the last trial that you bought that improvement of Gray and Simmons?

A. No, sir, I bought it of Simmons; I knew they were in partnership before that.

Redirect examination by Mr. Grimshaw:

Q. You say the timber was cut inside and outside the levees by whom?

A. By anybody that wanted it; they didn't buy the wood of anybody that I knew of.

146 From the crevasse-levee, over to the 10 acres, was there not a dense forest?

A. Yes, sir; a very thick forest, up to 1853, until after Taylor came there.

Q. Did you ever make any rails there?

A. Yes, sir; I made some for George Gordon.

Q. Who did you buy the timber of?

A. Nobody; I just took it. I made nearly 10,000 rails in 1853.

Q. Was that anything unusual, inside these levees to make rails; was it not a common thing to make rails and cut timber all through that timber there?

A. It was with me.

Recross-examination:

Q. Did Gordon get you to make those rails or buy them after you had made them?

A. He would buy them after I made them. I told him I would make some for him.

Q. What took place between him and Mr. Taylor you don't know?

A. No, sir.

Q. When was that?

A. In the latter part of 1853, or spring of 1854. I think they

147 they were working upon the Illinois Central Railroad at the time. Gordon told me he wanted to make some stock-pens with the rails, I think.

Q. You were not long about making 10,000 rails?

A. No, sir; I had men helping me.

Q. Did you see him use them for stock-pens afterwards?

A. No, sir; I don't know what he *done* with them?

Q. Did he hurry you up about making the rails?

A. No, sir.

Q. Were you as much as a month making them?

A. No, sir; I don't think I was.

Q. Were the cars running down in town at that time?

A. Yes, sir; I think they were cars down inside there before they finished the track on top. They were construction cars down on the inside.

Testimony of Robert H. Beard.

ROBERT H. BEARD, being sworn on behalf of plaintiffs, testified as follows:

Q. Where do you reside?

148 A. In Cairo. I have lived there since 1839, about thirty years.

Q. When you first went there were these levees built?

A. No, sir; they were building them. They were not actually furnished until 1856 or 1857. They were commenced in 1839 or 1840.

Q. What is your present business?

A. I hardly know; for the last two months I have been superintending for Mr. Taylor.

Q. What was your business before?

A. I was into everything most when I first came to Cairo. I worked upon the dry-docks; then in steamboats along shore; then into the wharf-boat business for about 8 or 10 years.

Q. Are you familiar with that country, inside these levees?

A. Yes, sir; all the lands inside and outside too.

Q. Is that cross-levee there yet?

A. No, sir; it is very near cut away.

Q. In 1846, about how wide was the clearing up along the Ohio?

A. From 1846 to 1850 it was about the same. From about 18th street up it was all timber clear to the river-bank. It was so up to 1850.

Q. That would be above the 10 acres?

A. Yes, sir.

Q. Did that continue across to the Miss. River?

149 A. No, sir; it came down to the west side of Commercial avenue.

Q. That is the clearing?

A. Yes, sir; from that up to 16th street; then it ran out to Poplar street, down Poplar to about 13th, then it came in again to the west side of Commercial avenue, and down that street till it came to about 10th or a little this side of 10th, then out as far as Washington avenue, and down that street to about 4th, then went out farther towards the Miss. River about 400 or 500 feet, then across to the Mississippi levee.

Q. Take a pencil and dot a line where the timber came on the map.

(Witness complies.)

Q. What was the rest of that land.

A. It was a dense forest.

Q. About the cutting of timber?

A. I don't know so much about that. Joiner and Whitcamp cut wood there, but when they cut it I don't know. They got it scattered through there—all around.

Q. Would what they cut for two or three years there be missed much?

A. Not much.

Q. How many teams were used in the wood business down to 1850 and 1851—about there?

150 A. There were very few teams in Cairo until 1850 along there; that is, after 1841. In 1841 there were a good many teams there. Along from 1847 to 1851 there were not more than 3 or 4 or 5 teams there, principally ox-teams.

Q. Wood they could haul out in 2 or 3 years could hardly be missed?

A. No, sir; I don't think they would miss *at* much.

Q. How was it about the timber on the outside of the levees?

A. There was timber all along the banks of the river when I came there.

Q. How was it on the Miss. side?

A. That is not all cleared yet.

Q. What year did Taylor come there?

A. In 1851, I think.

Q. Did he or not, at that time, begin to assume control of the property and get the people to recognize him?

A. Yes, sir.

Q. Didn't he commence clearing up right away?

A. No, sir; I suppose it was a year or so afterwards that he commenced clearing; he might have been clearing a little before.

Q. Was not Taylor's going there about co'nci*on*ent with the construction of the Ills. Cen. Railroad?

151 A. I believe they talking of constructing the road about the time he went there.

Q. Had not the town been abandoned for several years prior to Taylor's coming there?

A. It had not been doing anything since '41. In 1841, I think, the company failed. I think Mr. Holbrook left there in 1842, and left the property in the hands of Lyles. He was superintending there a while—until he died. For a time there didn't seem to be anybody. I think Mr. Lyles died in 1844.

Q. How long after that was it before any come there pretending to have any authority?

A. It was some time before Mr. Gilbert came. I don't recollect just when he came. I know he came and lived a while there and then went away again.

Q. Did you know of Gilbert having any wood cut or clearing up any ground?

A. No, sir.

Q. Did you know of his exercising any control over those buildings along the Ohio?

152 A. I know he lived in one of them a while.

Q. What control did he exercise over any of the others?

A. I don't know of any.

Q. Where did you live at that time?

A. Part of the time I lived in Upper Cairo, most of the time in a wharf-boat down on the point.

Q. Whose property did you live in when in Upper Cairo?

A. On this State ground.

Q. You didn't pay Gilbert any rent?

A. No, sir.

Q. Did you ever occupy any house in Lower Cairo?

A. Not all myself; I boarded with persons keeping house there.

Q. Under whom did they occupy?

A. I don't know. I boarded with a man on the point there in 1848 and 1850.

Q. How were those houses occupied generally prior to the time Taylor came there?

A. I can hardly answer who occupied them.

Q. Did not everybody come and go just as they pleased?

153 A. Well, there were a good many people lived there a long time, from 1842 up to 1845—no, Lyles lived there then steady until he died. I supposed they held under Mr. Holbrook. People would move in and out of those cottages.

Q. Did not that property appear to be abandoned to a great extent for 6 or 7 years prior to Taylor coming there?

(Objected to.)

Q. Were these houses vacant at any time?

A. Sometimes they were.

Q. When they got filled up, how did people get in?

A. When people would go out the houses would be left open.

Q. How about that foundry; was there any machinery in it?

A. It was full of machinery in 1841, when it was closed. It was taken

off in different ways. Some people took some of it to whom it didn't belong; there were two saw-mills there. They were closed just as they began running; they went just as the machinery. I don't think of those bui'dings were repaired any from the time they were built until they were torn down.

Q. Were these levees built when your went there?

A. Yes, sir.

154 Q. What was their condition?

A. A portion of the time the Ills. Cent. R. R. Co. fixed them up.

Q. Were they kept in repair all the time?

A. No, sir; they were not repaired much until they went to work on them. There was work done on them 2 or 3 times before Mr. Taylor came there; at one time there was some work done on the sewers. That was the first time I recollect seeing Mr. Gilbert; I think that was in 1844.

Q. When do you recollect seeing him do any work there since?

A. I don't recollect. He was there at that time. The sewers leaked, and he proposed to pay a certain amount to somebody to stop it, $50 or $100. I don't recollect him doing anything about them after that. I have seen him there a good many times since.

Q. State whether or not between 1847 and 1851 the citizens didn't repair that levee?

A. There was a place broke in the levee. I heard something about the citizens repairing it, but know nothing myself. That was in 1848. I only know about repa'ring it from hearsay. I was sick at the time and not able to be around.

Q. Who was your partner at that time?

155 A. George Gordon. I don't recollect seeing Gilbert there that year at all.

Q. How far from that 10 acres to the nearest corner of this contested land?

A. It is about 2,000 feet from the levee to the nearest point of this land.

Cross-examination by Mr. Logan:

Q. You say you were sick at the time that levee broke?

A. Yes, sir.

Q. Don't know whether Gilbert was there or not?

A. I know he was not living there.

Q. But whether he was there to get that break fixed you don't know?

A. No, sir; I do not.

Q. How long did Gilbert live at Cairo?

A. I don't recollect. He may have lived there one or two years. I boarded at the house he lived in afterwards.

Q. You don't know that these people moved in and out of those houses without permission?

A. I do know some of them did.

Q. Cane you name some of them?

A. Yes, sir; but don't care about it. There was a Mrs. Bryant;

156 she went there without permission. I think I was at her moving.

Q. Do you know she didn't have permission?

A. Yes, sir; I found out she didn't have permission from conversation and other things. I know she didn't have permission.

Q. Don't tell what anybody told about her going in; what do you know of your own knowledge?

A. I know she went in without permission.

Q. How did you find it out?
A. I don't think I shall tell you all the facts about it.
Q. Gilbert was about there occasional'y?
A. Yes, sir.
Q. Do you undertake to swear the Gilbert didn't give her permission to go in there?
A. Yes, sir.
Q. Were you with Gilbert all the time?
A. No, sir.
Q. How are you able to swe*re* he never gave her permission to go in there?
A. I am satisfied he would not let them in. I swe*re* I don't believe he ever gave her permission to go in. There were several others I know went in without permission; there was no one there to give them permission. I don't think they would have got it if they had asked it.
157 Q. Cocran was there?
A. Yes, sir; part of the time.
Q. You were not with him all the time to know that he gave them permission?
A. No, sir; I don't know of any that had permission to go in.
Q. This man you boarded with got permission to go in, didn't he?
A. I don't know anything about it; there were some that I know had no permission to go in.
Q. But you were not with Gilbert or Cocran to know for yourself?
A. I know they had no permission.
Q. What is your age now?
A. I am 43.
Q. In 1848 you'r about 23 years old?
A. Yes, sir.

Redirect-examination by Mr. Grimshaw:

Q. Did you know anything about Cocran being agent there?
A. No, sir.
Maps marked "Exhibits E, F, & G," put in evidence by plaintiff.
Also stipulation "Exhibit A," copy of deed marked "No. 2."
158 Also Exhibit marked "No. 3."

Deposition of D. L. Phillips was read in evidence on behalf of the plaintiff.

Testimony of D. L. Phillips.

Plaintiff next called D. L. PHILLIPS, a witness, who testified that the right of way for Illinois Central Railroad was condemned under order of court. On notice to all interested, the report of condemnation was approved by court; such condemnation was not made by arrangement with Taylor and Davis; that land was taken in July, 1853, according to plat made of ground condemned; and that there was an arrangement between Taylor & Davis, and the Central Railroad Company, that the railroad company was to keep up the levees.

Testimony of Joseph B. Holmes.

JOSEPH B. HOLMES was sworn and testified on behalf of the plaintiff.
Q. Were you acquainted with Isabella Bond in her life-time?
A. Yes, sir; she was the youngest sister of my wife; she lived in my

family several years. She was the youngest daughter of Shadrach Bond; she died, I think, in 1860; she was born in January, 1824.

159 Cross-examination by Mr. Logan:

Q. Axia Bond was Isabella Bond's mother?

A. Yes, sir, and of my wife. She lived at Kaskaskia. I live at Chester. The residence of Mrs. Bond was about a mile and a half from the Mississippi River, seven miles from Chester and about 120 miles from Cairo.

Q. When did you marry Miss Bond?

A. In 1830.

Testimony of James P. Craig.

JAMES P. CRAIG, being sworn, testified on behalf of plaintiff.

Q. Are you acquainted with the defendants S. S. Taylor and Miles A. Gilbert?

A. Yes, sir; I became acquainted with Mr. Taylor in June, 1854; Mr. Gilbert and Mr. Taylor came to the place where I was doing business in Chester, Illinois, and made a tender of $2,200, which they said was due and owing my wife, Isabella Bond, on account of some mortgage that had been made by Dennis B. Holbrook to her guardian.

Q. Who was her guardian?

160 A. Axia Bond, her mother.

Q. Did you receive that money?

A. I did not.

Q. How long had you been married then?

A. A'out a month, I think.

Q. You refused to receive the money from them?

A. I did.

Cross-examination by Mr. Edwards:

Q. Was it Taylor or Gilbert?

A. Both of them.

Q. Didn't you refuse to let Taylor see your wife?

A. I did not.

Q. He didn't see her?

A. I don't know that he asked to see her.

Testimony of Miles A. Gilbert, recalled.

MILES A. GILBERT, recalled and examined on the part of the plaintiff.

Q. (Letter exhibited to witness.) Look at that letter; do you know whose signature and handwriting that?

A. Mr. D. B. Holbrook's signature. I have seen him write frequently.

Q. Is the letter in his handwriting?

161 A. Yes, sir; I have no hesitation in saying that is his letter.

Q. What connection did D. B. Holbrook have with the Cairo City property in May, 1847?

A. He was president of that company.

Q. He is the gentleman refer'ed to as having received the deed from Mrs. Axia Bond?

A. Yes, sir.

Plaintiff proposes to put in evidence letters Exhibit B, signed by D. B. Holbrook, which was refused admission by the court; to which ruling plaintiff excepts.

SAINT LOUIS, *May 1st*, 1847.

DEAR SIR: I returned to this city a few weeks since, and on Sunday last took passage for below, intending upon my return to stop at Kaskaskia. But I was taken sick on board the boat, and was obliged to return to the hotel. My Dr. advised me not to leave the city until my fever took a favorable turn. The medicine has relieved me so that I am now recovering fast. I have arranged to have shares issued for (some?) of the incumbrance on the property, and which shares I can sell for money, to an amount sufficient to make the payments I have promised, as soon as the property is free from incumbrance.

As I have not money to pay at once, I have agreed with those holding mortgages to give them the note of the Exporting Co., &c. Transfer order for shares as co'latteral, and to make payment from time to time, as in funds from sale of shares. I inclose the form of the note I wish to give to Mr. Bond, and the transfer order for shares, in settlement of the mortgage-deed, and I can promise to pay five hundred dollars on account of the note some time next week, and the balance within sixty days after I have perfected the settlement, so that the property can be protected from injury and inundation before the June flood, which is very important for the credit of the city.

If my health permitted I would have been to see you and have made this proposal. I am very desirous to arrange the matter as soon as possible, for life is very uncertain, and unless I follow up the undertaking nothing will come from it.

If you come to St. Louis it is only necessary for Miss Bond to consent that the note and money be delivered to you instead of her brother, the administrator of the estate. The papers are all in your hands ready for delivery.

I find it very difficult to convince persons that Cairo will ever be of any value as a town, or that it can be protected at all from the floods, or the washing away of the Mississippi. I may be deceived, and be too sanguine myself in the matter; still, I think I should make the most of the property for those who are interested. I wish that you could do without any money, and receive interest quarterly. If you cannot, I shall arrange to pay $500.00 next week, and the balance within 60 days after the titles are perfected, which I hope to accomplish in all this month, if at all.

Yours, with respect,

D. B. HOLBROOK, *Pr., &.*

F. SWANWICK, Esq.,
Chester, Ills.

Testimony of Charles Thrupp.

CHARLES THRUPP was next sworn, and testified on behalf of plaintiff:

Q. What is your occupation?
A. Civil engineer.
Q. Where do you reside?
A. At Cairo.
Q. How long have you resided there?
A. For 17 years.
Q. Are you familiar with the lines about the point in and about Cairo?
A. Yes, sir.
Q. Take that city map, and point out to the jury the location of section 26.

(Witness does as directed, pointing out section 26, and the south half of the same.)

Q. How far is the east side of 26 to the Ohio levee in a direct line, not on the section-line, but straight across?

A. I should judge very near a half mile.

Q. Where is the crevasse levee?

A. (Witness points out on map.) There is more there now.

Q. What section was it on?

A. On 26.

Q. Is that a correct map of the points inside the levees?

A. Yes, sir; I made it in 1851 and '52. This is a correct map or copy of it as it was *there*.

(Another map exhibited.)

Q. Did you make that map?

A. That is a correct copy. That was a United States survey. These red lines show the lines of the rivers.

Q. When you were doing that, were you civil engineer of the Illinois Central Railroad Co.?

A. Yes, sir.

Cross-examination by Mr. Edwards?

Q. Do you the levee said to have been made by Capt. Long in 1849?

A. That was before I came there. There was a levee standing there at the time I went there.

(Another map.)

Q. Would that map represent that levee?

A. That is very near the location of it.

Q. That is not on you' map?

A. A portion of it was washed out by the river.

Q. Was there not another crevasse levee, or section 27, that has been washed away by the river?

A. I can't tell.

Q. You know nothing about that levee on 27, that had been washed in?

A. No, sir.

Q. What time in 1851 did you make that survey?

A. In October or November.

Q. Was any part of that levee there in 1851?

A. The levee was inside of 26 sect.; 27 was gone.

Q. Was there any levee running across to the Mississippi—running into 27 here? (Pointing.)

A. No, sir; it was on 26.

Q. You know nothing about what was before that?

A. No, sir.

Q. This map, otherwise than as represented, 27, is correct?

A. I suppose.

(Maps E, N put in evidence by plaintiff.)

Q. In 1851 the whole of section 27 was in the river?

A. The line of the Miss. levee went to the bank of the river—the levee that was there at that time.

Cross-examination by Mr. Edwards:

Q. Do you say the whole of the land in section 27 was in the river?

A. No, sir; not the whole of it.

Q. Was there not about a quarter of an acre still out when you made your survey?

A. No, sir; I don't think there was.

Q. Didn't you swear on the last trial there was about a quarter of an acre out when you made that servey?

A. No, sir; I don't recollect it. (Witness here explains the lines on the maps, showing possitions of the levees, and what was washed away and what remained in 1851 when he serveyed the land.)

(Another map, not hitherto exhibi'd, one line on which witness
165 states he run. He also states that he made some of the topographical work and some of the sand-bars, and that the map must have been correct at the time it was ; also that he made the small paps in the corner of the large one before him.

Plaintiff' then closed their case.

Rebutting evidence was introduced on behalf of the defendants.

Testimony of S. S. Taylor, recalled.

S. S. TAYLOR recalled, and examined by Mr. Edwards:

Q. Do you know Mr. Parker?

A. Yes, sir.

Q. Did you hear his testimony about a conversation you had?

A. Yes, sir.

Q. State whether you ever had such conversation with him or in his presence.

A. I never made any such statement with reference to not receiving any money for wood. I always received the money from all of them for all the wood they cut. I never stated that I never received
166 any money for wood. I have a book here at which I have looked to refresh my memory.

Q. Did you know Mr. Arter?

A. Yes, sir.

Q. Did you know of his building a house in Cairo?

A. I heard his testimony in regard to building a house on the outside of the levee. I gave him permission to build a house in June or July, 1852. He offered to move it upon 5 days' notice, and I gave him permission to build it. I made a report to my principals at the time of the fact that I gave Mr. Artie permission to build the house.

Q. Did you hear Gatlin's testimony about making rails for Gordon?

A. Yes, sir; Gordon applied to me, after the railroad-cars began to run to Cairo regularly, for a piece of ground to make stock-pens. He asked permission to cut rails to build a fence about them. That was after 1855, after this suit was commenced. Gordon said he had employed Gatlin to cut the rails. He never used the rails, because he never took the ground.

Q. Do you recollect where Gatlin was living at the time you came to Cairo?

167 A. He was living on the 10 acres outside the cross-levee. My recollection was that he went from there out to the Miss. levee.

Q. Did you give Mr. Showneesse, or any other person living on the 10 acres, any directions about it? If so, what was it?

A. I was required by Mr. Phillips, acting for the Illinois Centeral Railroad Company, to clear up the depot-grounds. I called upon Mr. Shawneesse, as one of the parties living on the depot-grounds, to assist me in clearing it. I knew all the parties residing there. I told Mr. Shownessee that the parties living on the grounds could have permission to locate on the outside of the Miss. levee without paying rent, or only a mere

nominal rent, until we wanted the grounds. Gatlin was on the Miss. levee, living in a shanty there at the time.

Q. Did you know Gray and Simmons?

A. Yes, sir; within a short time after I went to Cairo I went up the Miss. levee and found this field there. I found out it was Gray's. I asked Gray by what authority he made the field. He said by permission of Capt. Long. A few months before I got there Gray said
168 he told Capt. Long if he would give him permission to go upon the land he would move off when desired. I gave Gray permission to remain there about two years after I went there. After that Gatlin went there and took possession of the ground. In the spring of 1854 I went up to see Gatlin, and told him not to make any improvements upon the place; that we wanted the ground after a while. He made no objection to it. When we wanted the ground afterwards—we dug the ground from under his house—he made no objections.

Q. Do you the time Parker bought Joiner out in the wood business?

A. It was about June, 1854, after this suit was commenced. Joiner continued to pay for cord-wood until after June. It was some time after that before Joiner settled in full and transferred his right to Parker. I have a memoranda of it here in my book to show it.

Testimony of Mr. Shawnessy.

Mr. SHAWNESSY was next sworn, and testified as follows:

169 Q. Where do you reside?

A. In Cairo. I have lived there nearly 29 years. I lived upon the State ground part of the time. I was living there when Mr. Taylor came. I know Mr. Gatlin, the witness. I think he lived on the State ground when Mr. Taylor came there.

Q. Did you have any direction from Mr. Taylor with reference to the persons that were living on the State ground moving off from the 10 acres out where they were to go?

A. Yes, sir; the direction was that they move on that strip of ground, as tenants, at a nominal rent.

Q. What strip of land?

A. The strip of land lying between the Miss. levee and the Miss. River outside the levee.

Q. Did Mr. Gatlin move from the 10 acres?

A. He did, sir.

Q. Did you give him any permission, acting for Mr. Taylor, or did you communicate to him what Mr. Taylor said?

A. I did, sir; I conveyed the message Mr. Taylor sent to Mr. Gatlin.

170 Q. How long after that did he move?

A. I think he moved in a day or two; my recollection is he moved on this strip of land.

Q. Did you know Miles A. Gilbert?

A. I did, sir; I think he moved to Cairo in 1843, and I lived there about three years.

Q. What was he doing there?

A. He was acting as agent of the Cairo Co.

Q. Had he any other business?

A. I don't think he had.

Q. After he moved away, was he back and forward from that time on?

A. Yes, sir; three, four, or half a dozen times a year; I can't tell how many times.

Q. Were there cottages about Cairo at that time?

A. Yes, sir.

Q. What was your business there?

A. I was at various things: postmaster and a justice of the peace, overseer of the poor, and a doctor.

Q. Under whom did those persons occupy those cottages?

A. They said they held under Mr. Gilbert, as tenants.

171 Q. Did they say in what capacity Gilbert was acting?

A. As agent of the company. I had occasion to visit them often, and the greatest part of them said that.

Q. Did that extend over all the time from 1843 to 1851, or was it confined to any particular time?

A. During all the time back and forth.

Cross-examination by Col. Allen:

Q. You say you heard that from these poor people during all the time from 1843 to 1851?

A. Yes, sir.

Q. Who did you hear say that?

A. I could not name one-tenth of them. There was a Mrs. Murray and a Mrs. Pearce. There were 40 or 50 in cottages there.

Q. When did you have a conversation with Mrs. Murray?

A. I can't give the time.

Q. How did you hap'en to have a conversation with Mrs. Murray?

A. I visited them in their sickness.

Q. These conversations occurred when you were prescribing for them?

172 A. Yes, sir; the general understanding was that they were holding under Mr. Gilbert.

Q. How long did Mrs. Murray remain there?

A. All the time. I believe she is—I can't be certain about the number of years she was there.

Q. What was her business?

A. She was loose.

Q. What do you mean by loose?

A. She was a woman of ill-fame.

Q. How was it with Mrs. Perce?

A. I can hardly tell her business.

Q. Was she of any better fame?

A. She had several children living around there in a poor way. I can't tell how long she lived there.

Q. Had she no business?

A. She had about the same as the rest.

Q. The same as Mrs. Murray?

A. Not quite so bad; they had no way of supporting themselves except fishing, or something like that.

Q. Was there any more like Mrs. Murray that you had conversations with?

A. Yes, sir; there were a good many.

173 Q. Did all this class of people say they held under Gilbert?

A. Yes, sir; the biggest part of them told me so.

Q. Do you know what you swor' to at the June term, 1859, in this case?

A. No, sir.

Q. Didn't you state then that some of them rented of the company and some did not.

A. I expect I did.

Q. Didn't people come in there and go into houses without leave or license from 1843 till 1851?

A. Occasionally they took the liberty of going in without getting permission.

Q. Those people never told you they held under Gilbert, did they?

A. I don't know that I had any talk with them.

Q. Then all of them didn't hold under Gilbert?

A. No, sir, not all; some of them I didn't talk to.

Q. When you went there, whom did you hold under?

A. The Cairo Company. I lived in one of those cottages about 6 months in 1841. I moved on the depot lands. I got the permis-
174 sion from the State board of public works, John Hogan. I got liberty in 1840 to squat down on the land.

Q. Were there not squatters all around on the State land and other lands from 1843 to 1851?

A. There was on the State land. I don't think there was upon the other.

Q. Was there not squatters between the levee and the Miss. River?

A. I don't think there was. There might have been one or two.

Q. At the time Gatlin went to live on this Gray and Simmon's tract was there not squatters round there?

A. Very few. I think, perhaps, there were one or two. I believe Mr. Rattlemith was there.

Q. Did you ever pay any rent to the Cairo City Co.?

A. Yes, sir; to C. R. Jameson, their agent, in the fall of 1840.

Q. At that time there were a great number of people living there?

A. Yes, sir.

Q. Didn't most of them afterwards move away?

A. They did. Cairo went down.

Q. How old are you?

A. I am 63.

175 Q. You have been infirm in your hearing a good while?

A. Yes, sir.

Q. You have been sick a good deal?

A. Yes, sir; since I was here before.

Redirect examination by Mr. Edwards:

Q. Were there not business houses, besides the cottages that people lived in by permission of the company, upon the lands of the company?

A. Yes, sir.

Testimony of Mr. Joiner, recalled.

Mr. JOINER recalled by the defendants:

Q. Did you occupy one of those cottages?

A. Yes, sir; I paid rent to Mr. Gilbert, who was acting as agent of the Cairo City & Canal Co. That was in 1843. I didn't live in that one a great while. I moved into another one by his permission.

Q. Did Mr. Gilbert move into Cairo?

A. Yes, sir; I think in 1843, and moved away again 1846 to St. Mary's. He was back and forth frequently after that. I lived in the McKinney house at one time.

176 Q. Were there other parties from 1843 to 1851 who occupied those houses under Gilbert?

A. I don't know positively of but one man paying rent to Mr. Gilbert. My understanding was they held under Gilbert.

Q. Did you *you* ever buy wood there of other parties than Gilbert and Taylor?

A. No, sir; not in the limits of Cairo.

Q. When persons delivered wood to you inside or outside the levee, on the lands of the company, were they persons you hired as choppers?

A. Yes, sir.

Cross-examination by Mr. Allen:

Q. Do you recollect your testimony in regard to cutting upon the trial of this case at the June term, 1859?

A. No, sir.

Q. Didn't you testify then that you cut wood where the town is now laid out?

A. I don't remember.

Q. Didn't you testify that other people cut wood when they wanted to?

A. I know people were in the habit of cutting fire-wood when they wanted it.

Q. Do you recollect what your testimony was as to the amount
177 of wood you cut?

A. I believe I do, pretty near.

Q. Did you testify upon that trial that the permission you got from the agent of the co. was not on the land in dispute?

A. I don't think I did. I think I said I cut wood anywhere I could get it.

Q. Didn't you say at that time that you didn't cut any wood upon this disputed land?

A. I don't think I did. I believe I did cut over portions of the disputed lands. Those people who cut fire-wood didn't ask Gilbert anything about it. I don't know of anything ever being paid for fire-wood.

Testimony of Mr. Whitcamp, recalled.

Mr. WHITCAMP recalled for defendants, and testified as follows:

Q. Do you know when Mr. Gilbert came to Cairo?

A. No, sir; I think it was in 1843.

Q. Did he live in one of those cottages for a time?

A. Yes, sir; I think he did.

Q. Did you know of Mr. Gilbert having a boy drowned?

178 A. Yes, sir; he was living in one of those cottages at the time.

Q. After he moved away, was he back and forward there?

A. Yes, sir; I have seen him. I lived on a boat.

Q. Did you ever pay anybody else but Gilbert or Taylor for wood?

A. No, sir; I never bought any wood of Gilbert. I have bought of Mr. Taylor. I have bought wood down the river of other parties, but not on the Cairo land.

Q. If you got any wood at all on the Cairo land, it was from your own choppers?

A. Yes, sir; I hired men, and paid Taylor 20 cents per cord for the wood. That was in 1851.

Cross-examination by Mr. Allen:

Q. Didn't you buy wood of choppers who cut wood on that land before 1851?

A. No, sir.

Q. Didn't other people have wood cut and sell it to you?

A. Not at that time from the Cairo land. I did further down the river.

Testimony of Mr. Devore, (recalled.)

Mr. DEVORE recalled, and examined by Mr. Edwards for the defendants:

179 Q. Do you know when Mr. Gilbert came to Cairo?

A. In 1843, I think.

Q. Did you occupy one of the cottages?

A. No, sir; I occupied a building not of the cottage style; I got the permission of Mr. Gilbert to live in it.

Q. In what capacity did he profess to act?

A. As agent of the company.

Q. Did you know persons occupying those cottages from 1843 to 1851?

A. Some of them.

Q. Did you hear any of them, while in possession, say under whom they held?

A. I don't recollect much about it. I know there were parties living in there a long time. Mr. Gilbert was back and forth to Cairo after he went away.

Q. Do you recollect his having a son drowned?

A. Yes, sir. That was the year after he came there, I think.

Testimony of Miles A. Gilbert, (recalled.)

MILES A. GILBERT recalled, and examined on behalf of the defendants by Mr. Edward.

Q. You heard Mr. Arter's testimony about Mr. Sayer working on those levees?

180 A. Yes, sir.

Q. Who paid the men for their work?

A. I paid those men that Mr. Sayer took out to work upon the levee, as agent of the company, with the funds of the company. I know Mr. Artee very well, and did at that time. I knew him from the time he went into the store with Mr. Sayers, an' knew him when he was married; knew his wife and family very well. I met him frequently. I don't know that I ever passed him without speaking to him and he to me. I have frequently had conversations with Mr. Sayers about wood.

Q. Did Mr. Sayers ever pay you for wood in Mr. Arter's presence?

A. I can't say positively that Mr. Arter was present. I think he was. I have had conversations with Mr. Sayers about wood in the store before I moved away from Cairo. I think Arter was present, but am not positive. I know there was a young man in the store.

Q. Who was Mr. Lyles?

A. He was the engineer employed by me to cut off the cross-levee. He never was agent of the company.

181 Q. Do you know Mr. Beard, who testified here?

A. Yes, sir; wery well, since 1842.

Q. Do you recollect anything about a leak in the sewers?

A. Yes, sir. I recollect it. I was there. We became alarmed about it. Mr. Beard was there at the time. I lived in one of the best of those cottages.

Q. Did you lose a son there?

A. Yes, sir; in the spring of 1845.

Q. Did Mr. Beard know of that fact?

A. Yes, sir; he knew of it and expressed his sympathy with me.

Q. State whether you ever had any trouble with property you claimed for the company in that carpenter-shop.

A. There was attempts to take some property from that carpenter-shop illegally, and I defended it, and Mr. Beard was there and knowing to the fact that I was defending it for the company. I think that was in 1847.

Q. Who paid the men for building that cross-levee?

A. I paid them while that was being built. I saw Mr. Beard about there frequently. I knew him well.

182 Q. State whether you gave persons leases to go into those cottages.

A. I would give them permission and would go there and collect rent off them; when I would be gone frequently people would move in them, and I would find them on my return, but none of them ever denied my authority as agent of the company; when I would go in they would ask, the first thing, "Is this Mr. Gilbert?" They never refused to pay me, but always expressed their inability to pay. I generally let them remain until they could pay. I never turned them out.

Q. How was it about that foundry?

A. At the time the company broke up they owed a good deal, and executions would issue from justices of the peace and they would take out the machinery. I went in there afterwards to collect rents from persons living there; they never disputed my rights to collect rent.

Q. Something has been stated about Smith cultivating some land down there. Who gave them permission to go down there?

183 A. Mr. Smith wanted to know if I would allow him to cultivate that land with permission to pay me rent; I gave him liberty. John Eagan was another one who cultivated quite a number of acres, and also a man named Lynch, and another named Archer, and several others got permission to cultivate land there; I have nothing by which I can refresh my memory about these things, because all my books and papers were burned in the fire at Cairo, which was after Mr. Taylor came there.

Q. Capt. Long built the levee on the Mississippi River?

A. Yes, sir; I think they were a year in building that.

Q. He was not acting under you?

A. No, sir; he was acting by authority of the trustees.

Cross-examination by Col. Allen:

Q. When did you move to Cairo?

A. In 1843.

Q. Was that the first connection you had with the company?

184 A. No, sir; that was the time I moved down; it was the beginning of my agency; I remained there until 1846. I was there a little over three years. It must have in April or May, 1846, when I left. I moved to Alton and stayed there until the spring of 1847, then moved to St. Marry's, and have been there ever since.

Q. How many times a year were you back to Cairo after you left?

A. The first spring I was back once in two weeks for 6 or 8 months, then I went down once a month and l'ng*h*'ned my visits sometimes to 10 days.

Q. Did you know Mrs. Murray that lived in one of those cottages?

A. No, sir; I heard the name frequently, but didn't know her.

Q. But you are pretty certain you gave Mrs. Murray permission to go in there?

A. No, sir; I don't think I did.

Q. Did you ever see Mrs. Pearce?

A. I think she sent word to me to get permission to go into one of the cottages.

Q. You never collected any rent from those two ladies?

A. No, sir.

185 Q. You heard about a good many of these disreputable characters?

A. They slipped in while I was gone; I would send down and have them turned out.

Q. Do you know whether Mrs. Murray ever lived on that State ground?

A. I do not.

Q. These houses you collected rent from was away below these disputed lands?

A. Yes, sir; I should think ¾ miles. More of the cottages were on the disputed land.

Redirect examination by Mr. Edwards:

Q. The shanties on the disputed land was put there by your permission?

A. Yes, sir.

Recross-examination by Mr. Grimshaw:

Q. Who occupied those buildings that were put up by your permission?

A. Mr. Jeffries and Dr. Retter put up one just below the land in dispute.

186 (This was all the evidence offered and admitted on either side material to the issues and a determination of the case.)

Afterward, on the 10th day of July, 1869, the plaintiff asked the court to charge the jury upon these several points of law, as follows:

Instructions asked for by plaintiff.

1st. It devolves upon the defendants, who rely upon this section of law as a defence to the plaintiffs' action, to prove to the satisfaction of the jury that they, the defendants, or those under and through whom they claim color of title, have had the actual possession of the tracts of land in question for seven successive years prior to the 17th day of July, 1854, the date when this action was commenced; that they have paid all taxes legally assessed on the lands during the same seven years.

2nd. The good faith of the claim and color of title will be presumed unless, from the evidence, it is made to appear otherwise. If the jury shall find from the evidence that Taylor and Gilbert, the defendants, in 1854 tendered to Craig, the husband of Isabella F. Bond, $2,200

187 in payment for his wife's interest in the lands in controversy, that is a circumstance that may be taken into consideration, in connection with the other evidence in the case, as tending to relent the presumption of good faith of defendants under what they have produced as color of title.

3. If, in this case, it shall appear from the evidence that the taxes for any one or more of the seven successive years were paid by Miles A. Gilbert for his own benefit, the payment of taxes cannot avail Taylor

and Davis and those claiming under them; the jury are to deter. from all the evidence in the case whether all the taxes for said sev years were paid on account of Taylor and Davis, or whether for a po tion of that time they were paid on account of Miles A. Gilbert.

4th. To make out the actual possession of the lands in question, it must appear from the evidence that the defendants, or those under and through whom they claim, during the whole period of seven successive years prior to the 17th day of July, 1854, had possession adverse to
188 the legal claim of Isabella F. Bond and those claiming through her. During the whole of that time their possession must have been visibly notorious and exclusive; it must have been manifested by such unequivocal acts of dominion over the lands as would have given the owner of the lands, on reasonable enquiry, constant notice that the party or persons in possession were using and claiming the lands exclusively as their own.

5th. The defendants, to prevent a recovery in this case, must, as to each tract of land in dispute, show, by a preponderance of evidence, actual, visible, open, and notorious possession of the particular tract as to which the jury is enquiring. Possession by defendants of premises not claimed by plaintiff will not make out a defence as to any of the tracts in dispute, nor will possession by defendants of one distinct tract of the several tracts in controversy make out a defence as to any other tract or tracts in dispute.

189 6th. The law permits one tenant in common to possess, use, and enjoy the lands owned by himself and co-tenant without prejudice to the rights of an absent co-tenant in common The first section of the limitation law of March 2nd, 1839, cannot be successful'y invoked as a defence to an act of ejectment instituted by the tenant in common out of possession, unless there is evidence to satisfy the jury that the defendant or defendants, the co-tenant or co-tenants in common in possession, has or have been in the open, well-known, exclusi*on* and adverse possession, claiming the whole of the lands in question for the fall period of seven successive years prior to the commencement of such action. The payment of all the taxes assessed on land or lands owned in common by one of the co-tenants is not of itself evidence of an adverse possession on the part of the party who so pays, or who has so paid the taxes, as against the co-tenant or co-tenants in common out of possession.

7th. If in this case the jury are satisfied, from the evidence,
190 that Taylor and Davis, or their agents, up to the year 1850, did no act or acts in and about their alle*d*ged possession of the lands in question, except such acts as co-tenants in common had a lawful right to do towards the improvement of said tracts of land, or that they did such acts only as they were legally authorized to do by virtue of the charter to the Cairo City and Canal Company and the deed of release from Achsah Bond, the guardian of Isabella F. Bond, the plaintiff is entitled to recover to the extent as claimed in his declaration, subject to such rights in and over the lands in question as may be claimed under said charter and the deed of release executed by the guardian of said Isabella F. Bond.

8th. The building of dykes, levees, and embankments for the security and preservation of the city of Cairo, and for the security and preservation of said city and land, and all improvements thereon, from all and every inundation which could possibly effect or injure said city or the improvements therein, was authorized by the 1st section of the act incorporating the Cairo City and Canal Company, approved March

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2nd. The good faith of the claim and color of title will be presumed unless, from the evidence, it is made to appear otherwise. If the jury shall find from the evidence that Taylor and Gilbert, the defendants, in 1854 tendered to Craig, the husband of Isabella F. Bond, $2,200

187 in payment for his wife's interest in the lands in controversy, that is a circumstance that may be taken into consideration, in connection with the other evidence in the case, as tending to relent the presumption of good faith of defendants under what they have produced as color of title.

3. If, in this case, it shall appear from the evidence that the taxes for any one or more of the seven successive years were paid by Miles A. Gilbert for his own benefit, the payment of taxes cannot avail Taylor

and Davis and those claiming under them; the jury are to deter[mine] from all the evidence in the case whether all the taxes for said se[ven] years were paid on account of Taylor and Davis, or whether for a po[r]tion of that time they were paid on account of Miles A. Gilbert.

4th. To make out the actual possession of the lands in question, it must appear from the evidence that the defendants, or those under and through whom they claim, during the whole period of seven successive years prior to the 17th day of July, 1854, had possession adverse to
188 the legal claim of Isabella F. Bond and those claiming through her. During the whole of that time their possession must have been visibly notorious and exclusive; it must have been manifested by such unequivocal acts of dominion over the lands as would have given the owner of the lands, on reasonable enquiry, constant notice that the party or persons in possession were using and claiming the lands exclusively as their own.

5th. The defendants, to prevent a recovery in this case, must, as to each tract of land in dispute, show, by a preponderance of evidence, actual, visible, open, and notorious possession of the particular tract as to which the jury is enquiring. Possession by defendants of premises not claimed by plaintiff will not make out a defence as to any of the tracts in dispute, nor will possession by defendants of one distinct tract of the several tracts in controversy make out a defence as to any other tract or tracts in dispute.

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7th. If in this case the jury are satisfied, from the evidence,
190 that Taylor and Davis, or their agents, up to the year 1850, did no act or acts in and about their alle*d*ged possession of the lands in question, except such acts as co-tenants in common had a lawful right to do towards the improvement of said tracts of land, or that they did such acts only as they were legally authorized to do by virtue of the charter to the Cairo City and Canal Company and the deed of release from Achsah Bond, the guardian of Isabella F. Bond, the plaintiff is entitled to recover to the extent as claimed in his declaration, subject to such rights in and over the lands in question as may be claimed under said charter and the deed of release executed by the guardian of said Isabella F. Bond.

8th. The building of dykes, levees, and embankments for the security and preservation of the city of Cairo, and for the security and preservation of said city and land, and all improvements thereon, from all and every inundation which could possibly effect or injure said city or the improvements therein, was authorized by the 1st section of the act incorporating the Cairo City and Canal Company, approved March

191 4th, 1837; and the mode of procuring a release of damages occasioned by such building of dykes, levees, and embankments was provided for by the same act. The deed of release executed to said company by the guardian of Isabella F. Bond, who at the time was a minor, was a sufficient authority to said company to warrant them in constructing dykes, levees, and embankments over and across the lands belonging to said minor; but the construction of such improvements was not and is not to be taken of itself as evidence of a denial on the part of said company of the legal title and right of possession of said minor, and of those claiming through and under her, to the lands owned by said minor over and across which said improvements may have been constructed.

The court declined to so charge the jury on either and all of said points, as requested by the plaintiff, and instead thereof charged and instructed the jury as follows:

192 BEAVER
v.
TAYLOR & GILBERT.

This suit is brought to recover $\frac{1}{8}$th of certain tracts of land in Cairo. Beaver shows title from the Government through Isabella F. Bond, who sold it to Holmes, & from whom Beaver bought it. Before Isabella F. Bond sold it to Holmes, in 1852, her guardian, Achsah Bond, on the 22nd of May, 1837, reciting the act of the legislature passed March 4, 1837, empowering guardians to release the damages and interest of their wards in lands which the Cairo City Company might take for their use, sold the share of Isabella F. Bond to the Cairo City and Canal Company.

This deed, in the opinion of the court, does not in itself convey title, as the authority confer'ed by the legislature did not extend to the selling of the land. The plaintiff is therefore entitled to recover, unless the defendants bring themselves within the provisions of the first section of the act of the legislature of March 2*n*, 1839. By that
193 section, although a paper-title may be defective and fail to divert the title, yet if the purchaser bought the land in good faith, supposing he had a title, the deed he has got can be used as color of title; and if he, under the claim of title, takes possession of the lands and continues in possession of them for seven years, and pays the taxes on them for the same time, then he is as much the owner of the lands as if his paper-title was perfect.

The court instructs the jury that the deed from Achsah Bond is color of title within the meaning of the statute to $\frac{1}{8}$ part of the land in controversy. Good faith in buying the property, possession of it for seven years, and payment of taxes during that period must concur in order to bring the defendant within the terms of the statute.

Good faith is presumed in the absence of proof to the contrary; and where there is no actual fraud and no proof showing that the color of title was acquired in bad faith, which means in or by fraud, then the title was acquired in good faith. On the question of the payment of taxes the law is that the taxes must be paid for the benefit of the party
194 claiming the title.

Gilbert bought these lands in his own name at a tax sale in 1843 & 1845, as he swears, for the benefit of the company, and with their money, for the purpose of getting rid of an old tax-title, being at the time the general agent of the company.

The taxes on the land for 1846 & 1847 were paid in the name of [illegible] bert, but, as he testifies, with the funds of the company and for the benefit. If the jury believe this testimony is true, then it was a good payment of taxes by the company for those years; and as to the payment of taxes for the remainder of the seven years, there is no question but what they were paid by the company.

In order to defeat the plaintiff's title, the defendants must have had actual possession of the land; but actual possession, in the meaning of the statute, does not require a residence on the lands nor their enclosure by a fence. If the lands were occupied in such a manner by the defendants as to convey a constant notice to the plaintiff, or those under whom he der'ves title, that they were claimed adversely to him
195 or them, then they were, in the sense of the limitation law, in the actual possession of the defendants. In other words, if Isabella F. Bond, or the party claiming under her, could, by visiting the lands, readily see that they were in the actual occupation of the defendants, the statute is complied with. The adverse occupation must have continued for the full period of seven years before the suit was commenced in order to bar the plaintiff.

It must have been during all this period a continuous occupation and also an undivided one. In this case the possession by the State of the ten acres now the possession by heirs of Mackenzie does not affect the rights of the parties. But if Galtin was in possession adversely to the defendants, then their possession is not an undivided one to the N. E. fr. quarter of § 5, on which Galtin had his possession. But if he was in possession under the defendants, or if Gray and Simmons, from whom he bought, was in possession under them, then his possession is consistent with the rights of the defendants, and he had no interest adverse to them; but his possession was the possession of the defendants.

196 There is no arbitrary rule in relation to what, constitutes, under the law, actual possession. There must always be such a manifestation on the part of the claimant as to convey notice to the holder of the legal title that he is claiming adversely to his or her interest to . The way in which this is done may be very different in the case of a tract of land for a farm or tracts of land purchased for the purpose of being laid out into city lots.

The legislature of Illinois incorporated in 1837 the Cairo City and Canal Company, and authorized them to purchase the whole of township 17, and to lay the whole or such parts of it as they saw fit into city lots. If the jury believe from the evidence that the company did purchase the tracts of land in controversy (all being in township 17) for purpose authorized by the statute, and that during the period of 7 years, before this suit was begun, the defendants constructed levees and embankments for the purpose not only of preserving the then city
197 of Cairo from inundation, but also these lands, with a design of ultimately incorporating them into the city, and that these levees and embankments enclosed or crossed parts of the lands, so that the legal owner of the interest in controversy could readily see that they were occupied by the defendants, and timber was cut upon them in such manner by the defendants, or those having permission from them, as to convey notice to the owner of the adverse interest, then the defendants had such possession under color of title as will protect them.

If, on the contrary, the levees and embankments were constructed for the sole purpose of protecting the then city of Cairo, and the cutting of the timber was done in such a manner that the party holding the legal

pr could not see that it was done, then the defendants are not protected. If the embankments were made to protect these lands, as well as what was then known as the city of Cairo, and they
198 run across a part of them, and all the lands were designed for a common purpose, then the occupation by the levees of a part of the lands was the occupation of the whole.

The rights of a tenant in common are not involved in this controversy. If the defendants believed that they purchased the interest of Isabella F. Bond, and occupied the premises adversely to her interest, they are protected, notwithstanding the interest was undivided, they owning the remaining $\frac{5}{6}$th'.

The construction of levees by the Illinois Central Rail before the suit was commenced, under contract with the defendants, serves the same purpose as if they were constructed by the defendants.

The plf. is intitled to recover the $\frac{1}{6}$th of N. E. f. quarter of 27, there being no disclaimer of title by the defendants, unless the same was occupied by the defendants adversely for seven years prior to the bringing of this suit, it making no difference under the state of the
199 pleadings whether the land has been washed away by the Mississippi River or not.

The plaintiff at the time excepted to the refusal of the court to charge the jury on the several points of law as by him requested, and also excepted at the time to so much of the charge of the court, as given, as in conflict with and variant from the several propositions urged and submitted as the law by and on behalf of the plaintiff. The finding of the jury was a verdict for defendants, and the motion for a new trial was made and overruled, as is shown by the record. Before the motion for a new trial had been overruled, the defendant offerred to make the following stipulation :

Stipulation of defendants.

U. S. circuit court for the south'n dist. of Illinois, June term, A. D. 1869.

THOMAS BEAVER
vs.
MILES A. GILBERT & S. STAATS TAYLOR.

The defendants in this case stipulate that the verdict of the jury in this case, rendered at this term, may be so modified as to show a verdict for the plaintiff for of title in fee-simple to the undivided $\frac{1}{6}$ part
200 of the northeast fractional quarter of section twenty-seven, in township seventeen south, and range one west, part of the real estate sued for and described in the declaration in this suit, and that the judgment of the court may be entered therefor, non obstante verdico, the same if the jury in their verdict had so found.

S. T. LOGAN &
STUART & EDWARDS,
Attorneys for Defendants.

(Indorsed:) Filed July 10, 1869. J. A. Jones, clk.

Plaintiff refused to consent to said stipulation, after which the court overruled the motion for a new trial, as before stated.

The following are copies of the several maps [illegible] ferred to by the witnesses, or of such of them as the parties or attorneys by stipulation have agreed are sufficient for the purposes of the decision of this case.

(Here follow 2 maps, marked page 200.)

201, 202

203 Plaintiff prayed for this bill of exceptions, which is allowed, and is signed and sealed, and also made a part of the record in the cause hereinbefore mentioned.

S. H. TREAT. [SEAL.]

(Indorsed:) Filed July 10th, A. D. 1869. J. A. Jones, clk.

Then afterwards, to wit, on the eighth day of July, in the year of our Lord one thousand eight hundred and seventy-four, came again said plaintiff, by his attorney, and filed in the clerk's office of said circuit court his bond herein; which said bond is in the words and figures following, to wit:

Bond.

Supreme court of the United States.

THOMAS BEAVER, PLAINTIFF IN ERROR,
vs.
S. STAATS TAYLOR AND MILES A. GILBERT,
defendants in error.

To the circuit court of the United States for the southern district of Illinois:

Know all men by these presents, that we, Thomas Beaver,
204 Joseph B. Holmes, James P. Craig, and Jacob Bunn, are held and firmly bound unto S. Staats Taylor and Miles A. Gilbert, their and each of their executors or administrators, in the penal sum of two thousand dollars, to which payment, well and truly to be made, we bind ourselves and each of us jointly, severally, and firmly, and our and each of our heirs, executors, and administrators, by these presents. Sealed with our seals and dated this eighth day of July, A. D. 1874.

The condition of this obligation is such, that whereas the above-named Thomas Beaver hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the circuit court of the United States in and for the southern district of Illinois, at the June term thereof, A. D. 1869:

Now, therefore, if the above-named Thomas Beaver shall prosecute his said writ of error with effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THOMAS BEAVER. [SEAL.]
By JOS. B. HOLMES,
His Atty. in Fact.
JOS. B. HOLMES. [SEAL.]
JAMES P. CRAIG. [SEAL.]
JACOB BUNN. [SEAL.]

Approved.

S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed July 8th, 1874. J. A. Jones, clerk.

205 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the circuit court, before you, or some of you, between Thomas Beaver, plaintiff, and S. Staats Taylor and Miles A. Gilbert, defendants, a manifest error hath happened, to the great damage of the said Thomas Beaver, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you
206 have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Washington, this eighth day of July, A. D. one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsed:) Supreme Court United States. Thomas Beaver v. S. Staats Taylor and Stiles A. Gilbert. Writ of error. Returnable second Monday of October, A. D. 1874. Filed July 8th, A. D. 1874. J. A. Jones, clerk. J. Grimshaw, atty. plff. error.

207 UNITED STATES OF AMERICA, *ss:*

To S. Staats Taylor and Miles A. Gilbert, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein Thomas Beaver is plaintiff, and you, S. Staats Taylor and Miles A. Gilbert, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court for said district, this eighth day of July, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year.

S. H. TREAT.

Jackson Grimshaw, being first duly sworn, deposes and says that he is a resident of Quincy, Adams County, Illinois, and one of the attorneys of record in said cause, on behalf of said Thomas Beaver. He further states that on this the ninth day of July, A. D. 1874, he served the within citation in Springfield, in the southern district of

Illinois, upon Benjamin S. Edwards, esq., who resides in said Springfield, by reading said citation to said Edwards, and explaining the contents thereof to said Edwards, and *at* then and there delivering a true copy of said citation to said Edwards.

JACKSON GRIMSHAW.

Subscribed & sworn to before me this 9th of July, 1874.

J. A. JONES,
Clerk U. S. Circuit Court Southern District Illinois.

(Indorsed:) Supreme Court United States. Thomas Beaver v. S. Staats Taylor and Miles A. Gilbert. Citation.

208 Circuit court of the United States, southern district of Illinois, *ss:*

I, J. A. Jones, clerk of the circuit court of the United States for the southern district of Illinois, do hereby certify the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein Thomas Beaver is plaintiff and S. Staats Taylor and Miles A. Gilbert are defendants, as truly and correctly as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court, at Springfield, in said district, this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of our Indepeneence the ninety-ninth year.

[SEAL.] J. A. JONES, *Clk.*

209 UNITED STATES OF AMERICA, *ss:*

Supreme Court United States.

THOMAS BEAVER, PLAINTIFF IN ERROR,
vs.
S. STAATS TAYLOR AND MILES A. GI'BERT,
defendants in error,

Error to the circuit court of the United States in and for the southern district of Illinois, seventh judicial circuit.

James P. Craig, being duly sworn, deposes and says that he is a resident of Chester, Randolph County, Illinois, in said district; that he has lived in said Chester for twenty-eight years last passed; that he well knows the land in controversy in this case, and well knows the value of said land; that he has known the value of said land for seven years last passed. Affiant states that said land in controversy is now, and was at time of commencement of said suit in said circuit court, and at
210 the time of the rendition of judgment in said cause by said circuit court, well worth the sum of two thousand dollars, exclusive of all costs and damages in said cause.

JAMES P. CRAIG.

Sworn to and subscribed before me this 8th day of July, A. D. 1874 at my office at Springfield, Illinois, in said southern district.

Witness my hand and the seal of said circuit court the day and year above written.

[SEAL.] J. A. JONES, *Clerk.*

211 THOMAS BEAVER
vs.
SAMUEL STAATS TAYLOR AND MILES A. GILBERT. } Ejectment.

Writ of error to the circuit court of the United States for the southern district of Illinois.

Errors assigned.

The said Thomas Beaver, plaintiff in error, says that in the foregoing record and proceedings, in which said Samuel Staats Taylor and Miles A. Gilbert are defendants in error, there is manifest error, in this to wit:

The court erred in refusing to charge the jury, as asked by said plaintiff in error, in words and figures following, to wit:

It devolves upon the defendants, who rely upon this section of law as a defence to the plaintiff's action, to prove to the satisfaction of the jury, that they, the defendants, or those under and through whom they claim color of title, have had the actual possession of the tracts of land in question for seven successive years prior to the 17th day of July, 1854,
212 the date when this action was commenced; that they had paid all taxes legally assessed on the lands during the same seven years.

The court also erred in refusing to charge the jury, as asked for by the plaintiff in error, in words and figures following, to wit:

To make out the actual possession of the lands in question, it must appear from the evidence that the defendants, or those under and through whom they claim, during the whole period of seven successive years prior to the 17th day of July, 1854, had possession adverse to the legal claim of Isabella F. Bond, and those claiming through her. During the whole of that time, their possession must have been visibly notorious and exclusive.

It must have been manifested by such unequivocal acts of dominion over the lands as would have given the owner of the lands, on reasonable enquiry, constant notice that the party or persons in possession were using and claiming the lands exclusively as their own.

213 The court also erred in refusing to charge the jury, as asked for by the plaintiff in error, in words and figures following, to wit:

The defendants, to prevent a recovery in this case, must, as to each tract of land in dispute, show, by a preponderance of evidence, actual, visible, open, and notorious possession of the particular tract as to which the jury is enquiring.

Possession by defendants of premises not claimed by plaintiff will not make out a defense as to any of the tracts in dispute, nor will possession by defendants of one distinct tract of the several tracts in controversy make out a defense as to any other tract or tracts in dispute.

The court also erred in refusing to charge the jury, as asked by the plaintiff in error, in words and figures following, to wit:

If in this case the jury are satisfied from the evidence that Taylor and Davis, or their agents, up to the year of 1850, did no act or acts in and about their alleged possession of the lands in question except
214 such acts as tenants in common had a lawful right to do towards the improvement of said tracts of land, or that they did such acts only as they were legally authorized to do, by virtue of the charter to the Cairo City and Canal Company and the deed of release from Achsah Bond, the guardian of Isabella F. Bond, the plaintiff is entitled to re-

cover to the extent as claimed in his declaration, subject to such rights in and over the lands in question as may be claimed under said charter and the deed of release executed by the guardian of said Isabella F. Bond.

The court also erred in refusing to charge the jury, as asked for by the plaintiff in error, in words and figures following, to wit:

The building of dykes, levees, and embankments for the security and preservation of the city of Cairo, and for the security and preservation of said city and land and all improvements thereon, from all and every inundation which could possibly affect or injure said city, or the improvements thereon, was authorized by the 1st section of the act incorporating the Cairo City and Canal Company, approved March 4,
215 1837, and the mode of procuring a release of damages, occasioned by such building of dykes, levees, and embankments was provided for by the same acts.

The deed of release executed to said company by the guardian of Isabella F. Bond, who at the time was a minor, was a sufficient authority to said company to warrant them in constructing dykes, levees, and embankments over and across the lands belonging to said minor; but the construction of such improvements was not to be taken of itself as evidence of a denial on the part of said company of the legal title and right of possession of said minor and those claiming through and under her to the lands owned by said minor over and across which said improvements may have been constructed.

The court also erred in charging the jury in words and figures following, to wit:

There is no arbitrary rule in relation to what constitutes under the law actual possession. There must always be such a manifestation on the part of the claimant as to convey notice to the holder of the legal title that he is claiming adversely to his or her interest. The way in which this is done may be very different in the case of a tract of
216 land for a farm, or tracts of land purchased for the purpose of being laid out into city lots.

The legislature of Illinois incorporated in 1837 the Cairo City and Canal Company, and authorized them to purchase the whole of township 17, and to lay the whole or such parts of it as they saw fit into city lots.

If the jury believe from the evidence that the company did purchase the tracts of lands in controversy (all being in township 17) for purpose authorized by the statute, and that during the period of 7 years before this suit was begun the defendants constructed levees and embankments for the purpose not only of preserving the then city of Cairo from inundation, but also these lands, with a design of ultimately incorporating them into the city, and that these levees and embankments enclosed or crossed parts of the lands, so that the legal owner of the interest in controversy could readily see that they were occupied by the defendants, and timber was cut upon them in such manner by the defendants, or those having permission from them, as to convey notice
217 to the owner of the adverse interest, then the defendants had such possession under color of title as will protect them.

If, on the contrary, the levees and embankments were constructed for the sole purpose of protecting the then city of Cairo, and the cutting of the timber was done in such a manner that the party holding the legal title could not see that it was done, then the defendants are not protected.

If the embankments were made to protect these lands as well as what

was then known as the city of Cairo, and they run across a part of them, and all the lands were designed for a common purpose, then the occupation by the levees of a part of the lands was the occupation of the whole.

The court also erred in instructing the jury in words and figures following, to wit:

The rights of a tenant in common are not involved in this controversy.

If the defendants believed that they purchased the interest of Isabella F. Bond, and occupied the premises adversely to her interest, they are protected, notwithstanding the interest was undivided, they owning the remaining five-sixths.

218 The court also erred in charging the jury in words and figures following, to wit:

The plaintiff is entitled to recover the $\frac{1}{6}$ of the N. E. fr. quarter of 27, there being no disclaimer of title by the defendants, unless the same was occupied by the defendants adversely for seven years prior to the bringing of the suit; it making no difference under the state of the pleadings whether the land has been washed away by the Mississippi River or not.

Wherefore, and for divers other errors apparent on the face of said record, said plaintiff in error prays that the said judgment be reversed.

JACKSON GRIMSHAW,
Attorney for Plaintiff in Error.

(Indorsement on cover:) No. 245. Thomas Beaver, plaintiff in error, vs. S. Staats Taylor and Miles A. Gilbert. S. Illinois C. C. U. S. Filed 11th September, 1874.

Supreme Court of the United States,

October Term, 1876.

THOMAS BEAVER, Plaintiff in Error,

— vs. —

S. STAATS TAYLOR, and MILES A. GILBERT, Defendants in Error.

Brief of Lyman Trumbull,

For Def'ts in Error.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

Supreme Court of the United States,

October Term, 1876.

THOMAS BEAVER, Plaintiff in Error,

– vs. –

S. STAATS TAYLOR, and MILES A. GILBERT, Defendants in Error.

This was an action of ejectment brought by plaintiff in error, to recover an undivided sixth part of the Northwest quarter of section thirty-six, the Northeast fractional quarter of section twenty-seven, the South fractional half of section twenty-six, and the Northeast fractional quarter of section thirty-five, in Township seventeen South, Range one West, situated in the county of Alexander and State of Illinois, at or near the junction of the Ohio and Mississippi Rivers. The case was tried before a jury, who found the issue for the defendants. A motion for a new trial was made, and thereupon defendants filed a stipulation, (printed Record, 70,) that the verdict might be so modified as to show a verdict for the plaintiff in fee simple to the undivided sixth part of N. E. fr. quarter of section twenty-seven, and that judgment might be entered therefor *non obstante veredicto.* Plaintiff refused to consent to said stipulation, and thereupon the motion for a

new trial was overruled and judgment entered for the defendants. It was admitted on the trial that the plaintiff at the time of the institution of the suit, July 17, 1854, and at the time of the alleged entry of the defendants, was the owner in fee of one undivided sixth part of the premises mentioned in the declaration, by title derived from Isabella F. Bond, through Joseph B. Holmes, unless said title was barred or divested by the evidence submitted on the part of the defendants, and that the defendants at the same time were the owners in fee of the other five-sixths of said premises, and exercising acts of ownership over the entire premises. The title of defendants to the one-sixth claimed by the plaintiff is based on a claim and color of title to, and seven successive years possession, and payment of taxes upon, the said one-sixth, under Sec. 1 of the act of the Legislature of March 2, 1839, which is as follows:

"Every person in the actual possession of lands or tenements, under claim and color of title, made in good faith, and who shall, for seven successive years, continue in such possession, and shall also, during said time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owners of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession, and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section."

Revised Statutes, 1874, page 674.

The defendants, for the purpose of showing claim and color of title made in good faith, introduced in evidence, without objection, a deed from Achsah Bond, as guardian of said Isabella F. Bond, to the Cairo City and Canal Company, of whom the defendants

were admitted to be trustees. The jury found that defendants were in possession of the premises and paid the taxes for seven successive years, as required by the statute, and the only questions in the case arise upon the charge of the court to the jury, and its refusal to give certain instructions, as asked.

The exception to the charge (printed Record, 70), is in these words: "The plaintiff, at the time, excepted to the "refusal of the court to charge the jury on the said sev- "eral points of law, as by him requested, and also excepted, "at the time, to so much of the charge of the court, as "given, as is in conflict with and variant from the several "propositions urged and submitted as the law by and on "behalf of the plaintiff."

POINTS.

I.

THE EXCEPTION TO THE CHARGE IS TOO GENERAL.

Where a series of propositions are embodied in the instructions of the court, which are excepted to *en masse*, the exceptions must be overruled, if any one proposition be sound.

Rogers v. *The Marshall*, 1 Wall., 644.
Harvey v. *Tyler*, 2 Wall., 328.
Supreme Court Rules, No. 4.

II.

THE COURT IS NOT BOUND TO GIVE EVEN PROPER INSTRUCTIONS IN THE LANGUAGE ASKED. IT IS ENOUGH IF THE SUBSTANCE OF THE INSTRUCTION ASKED BE GIVEN, THOUGH IN DIFFERENT LANGUAGE FROM THAT ASKED.

The first, fourth, fifth, seventh, and eighth instructions, the refusal to give each of which, and none others, is assigned for error, relate to the character of defendants' possession, and their payment of taxes for seven successive years. They are as follows:

"1. It devolves upon the defendants, who rely upon this section of law as a defence to the plaintiff's action, to prove to the satisfaction of the jury, that they, the defendants, or those under and through whom they claim color of title, have had the actual possession of the tracts of land in question for seven successive years prior to the
212 17th day of July, 1854, the date when this action was commenced; that they had paid all taxes legally assessed on the lands during the same seven years.

"4. To make out the actual possession of the lands in question, it must appear from the evidence that the defendants, or those under and through whom they claim, during the whole period of seven successive years prior to the 17th day of July, 1854, had possession adverse to the legal claim of Isabella F. Bond, and those claiming through her. During the whole of that time, their possession must have been visibly notorious and exclusive.

"It must have been manifested by such unequivocal acts of dominion over the lands as would have given the owner of the lands, on reasonable enquiry, constant notice that the party or persons in possession were using and claiming the land exclusively as their own.

"5. The defendants, to prevent a recovery in this case, must, as to each tract of land in dispute, show, by a preponderance of evidence, actual, visible, open, and notorious possesion of the particular tract as to which the jury is enquiring.

"Possession by defendants of premises not claimed by plaintiff, will not make out a defense as to any of the tracts in dispute, nor will possession by defendants of one distinct

tract of the several tracts in controversy make out a defense as to any other tract or tracts in dispute.

"7. If in this case the jury are satisfied from the evidence, that Taylor and Davis, or their agents, up to the year of 1850, did no act or acts in and about their alleged possession of the lands in question, except such acts
214 as tenants in common had a lawful right to do towards the improvement of said tracts of land, or that they did such acts only as they were legally authorized to do, by virtue of the charter to the Cairo City and Canal Company, and the deed of release from Achsah Bond, the guardian of Isabella F. Bond, the plaintiff is entitled to recover to the extent as claimed in his declaration, subject to such rights in and over the land in question as may be claimed under said charter and the deed of release executed by the guardian of said Isabella F. Bond.

"The court also erred in refusing to charge the jury, as asked for by the plaintiff in error, in words and figures following, to wit:

"8. The building of dykes, levees, and embankments for the security and preservation of the city of Cairo, and for the security and preservation of said city and land and all improvements thereon, from all and every inundation which could possibly affect or injure said city, or the improvements thereon, was authorized by the 1st section of the act incorporating the Cairo City and Canal
215 Company, approved March 4, 1837, and the mode of procuring a release of damages, occasioned by such buildings of dykes, levees, and embankments was provided for by the same acts.

"The deed of release executed to said company by the guardian of Isabella F. Bond, who at the time was a minor, was a sufficient authority to said company to warrant them in constructing dykes, levees, and embankments over and across the lands belonging to said minor; but the construction of such improvements was not to be taken of itself as evidence of a denial on the part of said company of the legal title and right of possession of said minor and those claiming through and under her to the lands owned by said minor over and across which said improvements may have been constructed.

The charge of the court, those parts of it assigned for error being included in [ ] was as follows:

"11. This suit is brought to recover 1/6th of certain tracts of land in Cairo. Beaver shows title from the Govern-

ment through Isabella F. Bond, who sold it to Holmes, and from whom Beaver bought it. Before Isabella F. Bond sold it to Holmes, in 1852, her guardian, Achsah Bond, on the 22d of May, 1837, reciting the act of the Legislature passed March 4th, 1837, empowering guardians to release the damages and interest of their wards in lands which the Cairo City Company might take for their use, sold the share of Isabella F. Bond to the Cairo City and Canal Company.

"This deed, in the opinion of the court, does not in itself convey title, as the authority conferred by the Legislature did not extend to the selling of the land. The plaintiff is therefore entitled to recover, unless the defendants bring themselves within the provisions of the first section of the act of the Legislature of March 2d, 1839. By that section, although a paper-title may be defective, and fail to divert the title, yet if the purchaser bought the land in good faith, supposing he had a title, the deed he has got can be used as a color of title; and if he, under the claim of title, takes possession of the lands and continues in possession of them for seven years, and pays the taxes on them for the same time, then he is as much the owner of the lands as if his paper title was perfect.

"The court instructs the jury that the deed from Achsah Bond is color of title within the meaning of the statute to ⅛ part of the land in controversy. Good faith in buying the property, possession of it for seven years, and payment of taxes during that period must concur in order to bring the defendant within the terms of the statute.

"Good faith is presumed in the absence of proof to the contrary; and where there is no actual fraud and no proof showing that the color of title was acquired in bad faith, which means in or by fraud, then the title was acquired in good faith. On the question of the payment of taxes the law is that the taxes must be paid for the benefit of the party claiming the title.

"Gilbert bought these lands in his own name at a tax sale in 1843 and 1845, as he swears, for the benefit of the company, and with their money, for the purpose of getting rid of an old tax title, being at the time the general agent of the company.

"The taxes on the land for 1846 and 1847 were paid in the name of Gilbert, but, as he testifies, with the funds of the company and for their benefit. If the jury believe this testimony is true, then it was a good payment of taxes by the company for those years; and as to the payment of

taxes for the remainder of the seven years, there is no question but what they were paid by the company.

"In order to defeat the plaintiff's title, the defendants must have had actual possession of the land; but actual possession, in the meaning of the statute, does not require a residence on the lands nor their enclosure by a fence. If the lands were occupied in such a manner by the defendants as to convey a constant notice to the plaintiff, or those under whom he derives title, that they were claimed adversely to him or them, then they were, in the sense of the limitation law, in the actual possession of the defendants. In other words, if Isabella F. Bond, or the party claiming under her, could, by visiting the lands, readily see that they were in the actual occupation of the defendants, the statute is complied with. The adverse occupation must have continued for the full period of seven years before the suit was commenced in order to bar the plaintiff.

"It must have been during all this period a continuous occupation and also an undivided one. In this case the possession by the State of the ten acres now the possession by heirs of Mackenzie does not affect the rights of the parties. But if Galtin was in possession adversely to the defendants, then their possession is not an undivided one to the N. E. fr. quarter of § 5, on which Galtin had his possession. But if he was in possession under the defendants, or if Gray and Simmons, from whom he bought, was in possession under them, then his possession is consistent with the rights of the defendants, and he had no interest adverse to them; but his possession was the possession of the defendants.

"There is no arbitrary rule in relation to what constitutes, under the law, actual possession. There must always be such a manifestation on the part of the claimant as to convey notice to the holder of the legal title that he is claiming adversely to his or her interest to The way in which this is done may be very different in the case of a tract of land for a farm or tracts of land purchased for the purpose of being laid out into city lots.

"The legislature of Illinois incorporated in 1837 the Cairo City and Canal Company, and authorized them to purchase the whole of township 17, and to lay the whole or such parts of it as they saw fit into city lots. If the jury believe from the evidence that the company did purchase the tracts of land in controversy (all being in township 17) for purpose authorized by the statute, and that during the

period of 7 years, before this suit was begun, the defendants constructed levees and embankments for the purpose not only of preserving the then city of Cairo from inundation, but also these lands, with a design of ultimately incorporating them into the city, and that these levees and embankments enclosed or crossed parts of the lands, so that the legal owner of the interest in controversy could readily see that they were occupied by the defendants, and timber was cut upon them in such manner by the defendants, or those having permission from them, as to convey notice to the owner of the adverse interest, then the defendants had such possession under color of title as will protect them.

"If, on the contrary, the levees and embankments were constructed for the sole purpose of protecting the then city of Cairo, and the cutting of the timber was done in such a manner that the party holding the legal title could not see that it was done, then the defendants are not protected. If the embankments were made to protect these lands, as well as what was then known as the city of Cairo, and they ran across a part of them, and all the lands were designated for a common purpose, then the occupation by the levees of a part of the lands was the occupation of the whole. The rights of a tenant in common are not involved in this controversy. If the defendants believed that they purchased the interest of Isabella F. Bond, and occupied the premises adversely to her interest, they are protected, notwithstanding the interest was undivided, they owning they remaining 5-6ths."

The construction of levees by the Illinois Central Rail —— before the suit was commenced, under contract with the defendants, serves the same purpose as if they were constructed by the defendants.

"The plaintiff is entitled to recover the ⅙ of N. E. fr. quarter of 27, there being no disclaimer of title by the defendants, unless the same was occupied by the defendants adversely for seven years prior to the bringing of this suit, it making no difference, under the state of the pleadings, whether the land has been washed away by the Mississippi River or not."

The substance of the 1st, 4th and 8th instructions asked was given by the court in charging the jury that "good "faith in buying the property, possession of it for seven

" years, and payment of taxes during that period must " concur, in order to bring the defendant within the terms " of the statute, that, 'If the lands were occupied in " ' such manner by the defendants as to convey a constant " ' notice to the plaintiff, or those under whom he derives " ' title, that they were claimed adversely to him or them, " ' then they were, in the sense of the limitation law, " ' in the actual possession of the defendants. In other " ' words, if Isabella F. Bond, or those claiming under her, " ' could, by visiting the lands, readily see that they were " ' in the actual occupation of the defendants, the statute " ' is complied with. The adverse possession must have " ' continued for the full period of seven years before the " ' suit was commenced, in order to bar the plaintiff. It " ' must have been, during all this period, a continuous " ' possession, and an undivided one.' "

The Court also, by charging the jury that if " the levees " and embankments were constructed for the sole purpose " of protecting the then City of Cairo, and the cutting of " the timber was done in such a manner that the party " holding the legal title could not see that it was done, " then the defendants are not protected," virtually instructed them, as asked in the 8th instruction, that " the construction of such improvements was not to be " taken, of itself, as evidence of a denial on the part of " said company of the legal title and possession of said " minor, or those claiming through and under her."

The fifth instruction, as applied to the facts of the case, was erroneous, and was purposely refused. The record shows that a corporation was created for the purpose of purchasing the whole of fractional township seventeen, laying it off into lots, to be known as the city of Cairo, and constructing dykes, levees, &c., for the preservation of said city and lands from inundations, &c. The entire body of land having been purchased, and being claimed by the defendants for a common purpose, the construction

of levees, so as to embrace part of the land, was the occupation of the whole, and so the Court charged. The possession of part of a body of land held for a common purpose, under a deed and claim of title of the whole, constitutes a possession co-extensive with the paper title.

The seventh instruction asked was not applicable to the facts of the case, and was, therefore, properly refused. This suit is for a one-sixth interest, to which the defendants claim title, not by virtue of an actual trustee of the plaintiff, or the party under whom he claims as a tenant in common, but by virtue of a deed from the party under whom the plaintiff claims, coupled with seven years possession and payment of taxes, and the rights of a tenant in common are not involved in the controversy.

The charge of the Court is full, covers the whole case, and is believed to be in strict conformity to the law, as applicable thereto.

LYMAN TRUMBULL,

Attorney for Defendants in Error.